

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

Form 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended June 30, 2017

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____
Commission File Number 001-33383

Super Micro Computer, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

77-0353939
(I.R.S. Employer
Identification No.)

980 Rock Avenue
San Jose, CA 95131
(Address of principal executive offices, including zip code)
(408) 503-8000
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, \$0.001 par value per share	SMCI	OTC

Securities registered pursuant to section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§229.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b of the Exchange Act) Yes No

The aggregate market value of the registrant's common stock held by non-affiliates, based upon the closing price of the common stock on December 31, 2016, as reported by the Nasdaq Global Select Market, was \$1,110,444,831. Shares of common stock held by each executive officer and director and by each person who owns 5% or more of the outstanding common stock, based on filings with the Securities Exchange Commission, have been excluded since such persons may be deemed affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

[Table of Contents](#)

As of March 31, 2019, there were 49,881,914 shares of the registrant's common stock, \$0.001 par value, outstanding, which is the only class of common stock of the registrant issued.

DOCUMENTS INCORPORATED BY REFERENCE

None

SUPER MICRO COMPUTER, INC.
ANNUAL REPORT ON FORM 10-K
FOR THE FISCAL YEAR ENDED JUNE 30, 2017

TABLE OF CONTENTS

	<u>Page</u>
Explanatory Note	2
PART I	
Item 1. Business	3
Item 1A. Risk Factors	11
Item 1B. Unresolved Staff Comments	28
Item 2. Properties	28
Item 3. Legal Proceedings	29
Item 4. Mine Safety Disclosures	30
PART II	
Item 5. Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities	31
Item 6. Selected Financial Data	33
Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations	35
Item 7A. Quantitative and Qualitative Disclosures About Market Risk	50
Item 8. Financial Statements and Supplementary Data	51
Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure	100
Item 9A. Controls and Procedures	100
Item 9B. Other Information	110
PART III	
Item 10. Directors, Executive Officers and Corporate Governance	110
Item 11. Executive Compensation	117
Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	128
Item 13. Certain Relationships and Related Transactions and Director Independence	130
Item 14. Principal Accountant Fees and Services	132
PART IV	
Item 15. Exhibits and Financial Statement Schedules	132
Signatures	136

Unless the context requires otherwise, the words “Super Micro,” “Supermicro,” “we,” “Company,” “us” and “our” in this document refer to Super Micro Computer, Inc. and where appropriate, our wholly owned subsidiaries. Supermicro, the Company logo and our other registered or common law trademarks, service marks, or trade names appearing in this Annual Report on Form 10-K are the property of Super Micro Computer, Inc. or its affiliates. Other trademarks, service marks, or trade names appearing in this Annual Report on Form 10-K are the property of their respective owners.

Explanatory Note

This Annual Report on Form 10-K includes restatement of: (1) our consolidated balance sheet as of June 30, 2016 and the related consolidated statements of operations, comprehensive income, stockholders' equity, and cash flows for each of the fiscal years ended June 30, 2016 and 2015 in Part II, Item 8 of this Annual Report on Form 10-K; (2) our selected financial data as of and for our fiscal years ended June 30, 2016 and 2015 located in Part II, Item 6 of this Annual Report on Form 10-K; (3) our management's discussion and analysis of financial condition and results of operations as of and for our fiscal years ended June 30, 2016 and 2015 contained in Part II, Item 7 of this Annual Report on Form 10-K; and (4) our quarterly financial information for the three months ended June 30, 2016 in Part II, Item 8, Note 17, "Quarterly Financial Information (Unaudited)" of the notes to the consolidated financial statements in Part II, Item 8 of this Annual Report on Form 10-K. See below and Part II, Item 8, Note 19, "Restatement of Previously Issued Consolidated Financial Statements" of the notes to the consolidated financial statements of this Annual Report on Form 10-K for a detailed discussion of the effect of the restatement.

Prior to filing this Annual Report on Form 10-K, we filed Quarterly Reports on Form 10-Q/A for the quarterly periods ended March 31, 2017, December 31, 2016, and September 30, 2016, which included restatement of the condensed consolidated financial statements (and related disclosures) for the periods described therein, as set forth in those reports.

We have not previously issued consolidated financial statements as of and for the year ended June 30, 2017, for the reasons set forth below under "Background of Restatement." This Annual Report on Form 10-K includes our consolidated balance sheet as of June 30, 2017 and related consolidated statements of operations, comprehensive income, stockholders' equity for the fiscal year then ended, and unaudited quarterly financial information for the quarter ended June 30, 2017.

Background of Restatement

In August 2017, prior to the issuance of our consolidated financial statements for the fiscal year ended June 30, 2017, the audit committee (the "Audit Committee") of our Board of Directors (the "Board") commenced an investigation (the "Investigation") into certain accounting and internal control matters, principally focused on certain revenue recognition matters. The Investigation was conducted with the assistance of outside counsel, which retained forensic accountants to assist them in their work. Following the conclusion of the Investigation, the Audit Committee directed its outside counsel and its forensic accountants to conduct additional procedures on an expanded scope of revenue recognition matters. Concurrent with these additional procedures, new members of our management, under the direction of the Audit Committee, performed a thorough analysis of our historical financial statements, accounting policies and financial reporting, as well as our disclosure controls and procedures and our internal control over financial reporting. During the course of the Investigation, the further procedures by outside counsel and the management analysis (collectively, the "Investigation, Procedures and Analysis"), the Audit Committee and management determined certain employees had violated our Code of Business Conduct and Ethics and discovered accounting and financial reporting errors and certain irregularities. On November 14, 2018, the Board, upon the recommendation, and with the concurrence of the Audit Committee and new members of management, concluded that certain previously filed consolidated financial statements and related financial information should no longer be relied upon.

The Investigation, Procedures and Analysis identified certain material weaknesses in our internal control over financial reporting. See Part II, Item 9A, "Controls and Procedures" of this Annual Report on Form 10-K for the conclusions of our Chief Executive Officer and Chief Financial Officer regarding disclosure controls and procedures and our internal control over financial reporting.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, as amended that involve risks and uncertainties. These statements relate to future events or our future financial performance. In some cases, you can identify forward-looking statements by terminology including “would,” “could,” “may,” “will,” “should,” “expect,” “intend,” “plan,” “anticipate,” “believe,” “estimate,” “predict,” “potential,” or “continue,” the negative of these terms or other comparable terminology. In evaluating these statements, you should specifically consider various factors, including the risks described below, under Part I, Item 1A, “Risk Factors”, and in other parts of this Form 10-K as well as in our other filings with the SEC. Moreover, we operate in a very competitive and rapidly changing environment. New risks emerge from time to time. It is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. In light of these risks, uncertainties and assumptions, the future events and trends discussed in this Annual Report on Form 10-K may not occur and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements.

We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law. We cannot guarantee future results, levels of activity, performance or achievements. Given these risks and uncertainties, readers are cautioned not to place undue reliance on such forward-looking statements.

PART I

Item 1. Business

Overview

We are a Silicon Valley founded, headquartered and operated provider of application optimized high performance and high efficiency server and storage systems. We develop and provide end-to-end green computing solutions to the cloud computing, data center, enterprise, artificial intelligence and machine learning, big data, hyper-converged, OEM, high performance computing (“HPC”), and Internet of Things (“IoT”)/embedded markets. Our solutions range from complete server, storage, blade and workstations to full racks, networking devices, server management software and global support and services. We offer our customers a high degree of flexibility and customization by providing a broad array of server configurations from which they can choose the optimal solutions to fit their computing needs. Our server systems, subsystems and accessories are architecturally designed to provide high levels of reliability, quality, configurability and scalability, thereby enabling our customers to benefit from improvements in compute performance, density, thermal management and power efficiency, which lead to lower total cost of ownership.

We perform the majority of our research and development efforts in-house, at our San Jose, California headquarters, which we believe increases the efficiency of communication and collaboration between design teams, streamlines the development process and reduces time-to-market. We have developed a set of design principles which allow us to aggregate individual industry standard components and materials to develop optimized products, such as serverboards, chassis, power supplies, and networking and storage devices. This building block approach allows us to provide a broad range of products, and enables us to build and deliver application-optimized solutions based upon customers’ requirements.

Core to our business is our focus on green computing. We are committed to leveraging the best new and emerging technologies and designs to reduce the environmental impact of the systems we deliver to market. Building these higher efficiency resource optimized systems brings a dual benefit to our customers of lower acquisition and operating costs while at the same time reducing the energy consumption and eWaste.

We conduct our operations principally from our Silicon Valley headquarters in California and subsidiaries in Taiwan and the Netherlands. We sell through our direct sales force as well as through distributors, including value added resellers and system integrators, and OEMs who develop their products on our systems. During fiscal year 2017, our products were purchased by over 900 customers in 110 countries. We commenced operations in 1993 and have been profitable every year since inception. For fiscal years 2017, 2016 and 2015, our net sales were \$2,484.9 million, \$2,225.0 million and \$1,954.4 million, respectively, and our net income was \$66.9 million, \$72.1 million and \$92.6 million, respectively.

The Supermicro Solution

We develop and manufacture high performance server solutions based upon an innovative, modular and open architecture. Our primary competitive advantages are the breadth of our product portfolio that can better match exact customer requirements and our ability to deliver new technologies to market faster. Our competitive advantages arise from how we combine our integrated internal research and development resources with our deep understanding of complex computing requirements to develop the intellectual property used in our server solutions. These competitive advantages have enabled us to develop a set of design principles and performance specifications that meet industry standard Server System Infrastructure ("SSI") requirements and also incorporate the advanced functionality and capabilities required by our customers. We believe that our approach provides us with greater flexibility to quickly and efficiently develop new server solutions that are optimized for our customers' specific application requirements.

Flexible and Customizable Server Solutions

We provide a broad portfolio of flexible and customizable server solutions to better address the specific application needs of our customers. Our design principles allow us to aggregate industry standard components and materials to develop optimized server subsystems and accessories, such as serverboards, mid/backplanes, chassis and power supplies to deliver a broad range of products with superior features. This building block approach allows us to provide a broad range of optimized solution SKUs.

Rapid Time-to-Market

We are able to reduce the design and development time required to incorporate the latest technologies into the next generation of application optimized server solutions. Our in-house design competencies, control of the design of many of the components used within our server systems and our building block architecture enable us to rapidly develop, build and test server systems, subsystems and accessories with unique configurations. As a result, when new technologies are brought to market, we are generally able to quickly design, integrate and assemble solutions with little need to re-engineer other portions of our solution. Our efficient design capabilities allow us to offer our customers server solutions incorporating the latest technology with a better price-to-performance ratio. We work closely with the leading microprocessor, GPU, memory, disk/flash, and interconnect vendors and other hardware and software suppliers to coordinate the design of our new products with their product release schedules, thereby enhancing our ability to rapidly introduce new products incorporating the latest technology.

Improved Power Efficiency and Thermal Management

We leverage advanced technology and system design expertise to reduce the power consumption of our server, blade, workstation and storage systems. We believe that we are an industry leader in power saving technology. Our server solutions include many design innovations to optimize power consumption and manage heat dissipation. We have designed flexible power management systems which customize or eliminate components in an effort to reduce overall power consumption. We have developed proprietary power supplies that can be integrated across a wide range of server system form factors which can significantly enhance power efficiency. We have also developed technologies that are specifically designed to reduce the effects of heat dissipation from our servers. Our thermal management technology allows our products to achieve a better price-to-performance ratio while minimizing energy costs and reducing the risk of server malfunction caused by overheating. We have also developed power management software that controls power consumption of server clusters by policy-based administration.

High Density Servers

Our servers are designed to enable customers to maximize computing power while minimizing the physical space utilized, which allows our customers to efficiently deploy our server systems in scale-out configurations. Through our industry-leading technology, our systems offer significantly more memory, hard drive storage and expansion slots than traditional server systems with a comparable server form factor. For example, our BigTwin solutions contain two or four full feature dual processor hot-pluggable compute nodes with All-Flash Non-Volatile Memory express ("NVMe") support in a 2 rack unit ("2U") server. This high density design is well suited for our customers that require highly space-efficient solutions and delivers higher efficiency through sharing resources across systems.

Strategy

Our objective is to be the world's leading provider of application optimized, high performance server, storage and networking solutions. Achieving this objective requires continuous development and innovation of our solutions with better price performance and architectural advantages compared with our prior generation of solutions and with solutions offered by our competitors. We believe that many of these product innovations are gaining momentum based on the strong year-over-year

revenue growth across these next-generation products. We believe that our strategy and our ability to innovate and execute will enable us to maintain our relative competitive position in many of our product areas and improve our competitive position in others, while providing us with additional long-term growth opportunities. Key elements of our strategy include maintaining our time-to-market advantage, enhancing our software management solutions, expand our service and support offerings, further optimize our global operating structure and deepen our relationships with suppliers and manufacturers.

Maintain Our Time-to-Market Advantage

We believe one of our major competitive advantages is our ability to rapidly incorporate the latest computing innovations into our products. We intend to maintain our time-to-market advantage by continuing our investment in our research and development efforts to rapidly develop new proprietary server, storage and networking solutions based on industry standard components. We plan to continue to work closely with technology partners such as Intel Corporation ("Intel"), Nvidia Corporation ("Nvidia") and Advanced Micro Devices, Inc. ("AMD"), to develop products that are compatible with the latest generation of industry standard technologies. We believe these efforts will allow us to continue to offer products that lead in price for performance as each generation of computing innovations becomes available.

Enhance Our Software Management Solutions

We have introduced and plan to continue developing additional server, storage and networking management software capabilities and partnering with certain software suppliers for software solutions that are integrated with our server products. This will enable our customers to simplify and automate the large scale deployment, configuration and monitoring of our servers.

Expand Our Service & Support Offerings

We intend to continue to expand our global customer service and support offerings and enable our customers to purchase service and support together with our complete server systems as total solution packages around the world. Our service and support is designed to help our customers improve uptime, reduce costs and enhance the productivity of their investment in our products. We believe that continued enhancement of these offerings will support the continued growth of our business and increase our penetration with enterprise customers.

Further Optimize Our Global Operating Structure

We plan to continue to increase our worldwide manufacturing capacity and logistics capabilities in the US, Netherlands and Taiwan in order to more efficiently serve our customers and lower our manufacturing costs. We continue to assess the efficiency of our global tax structure to manage our tax costs. Within our global operating structure, we employ stringent due diligence and qualification processes to select our contract manufacturers, which we regularly audit for process, quality and control. Our global manufacturing process is designed to ensure the end-to-end security of our products.

Deepen Our Relationships with Suppliers and Manufacturers

Our efficient supply chain and combined internal and outsourced manufacturing allow us to build customized systems to order, while minimizing costs. We plan to continue leveraging our relationships with suppliers and contract manufacturers in order to maintain and improve our cost structure as we benefit from economies of scale. We intend to continue to source non-core products from external suppliers.

Products and Services

We offer a broad range of application-optimized server solutions, including storage, rackmount and blade server systems and subsystems and accessories, which can be used to build complete server systems serving a variety of markets including cloud computing, data center, enterprise, big data, HPC, deep learning and IoT embedded. The percentage of our net sales represented by sales of server systems increased to 70.0% in fiscal year 2017 from 68.9% in fiscal year 2016 and from 60.7% in fiscal year 2015, and the percentage of our net sales represented by sales of subsystems and accessories was 30.0% in fiscal year 2017, 31.1% in fiscal year 2016 and 39.3% in fiscal year 2015.

Server Systems

We sell server systems in rackmount, blade, Twin and multi-node form factors, which support single, dual and multiprocessor architectures. A summary of our server systems and their markets are listed below.

Our SuperBlade® and MicroBlade™ system families are each designed to share common computing resources, thereby saving space and power over standard rackmount servers. We believe that our SuperBlade and MicroBlade servers, with our unique disaggregated resource-saving architectures that enable the independent upgrade of compute modules and other Blade resources, offer a unique value to our customers. They provide industry-leading density, price-to-performance per square foot and energy savings to reduce data center total cost of ownership ("TCO").

Our SuperStorage systems in 2U, 3 rack unit ("3U") and 4 rack unit ("4U") platforms provide high density storage while leveraging high- efficiency power to maximize performance-per-watt savings to reduce TCO for Enterprise Data Centers, Big Data and other high performance applications. For example, our All-Flash NVMe systems that deliver better performance and efficiency than traditional storage solutions and our Simply Double SuperStorage systems that include twice the number of hot-swap bays as 2U industry standard systems, offer up to twice the storage capacity and input/output operations per second in the same amount of space.

Our Twin family of multi-node server systems including 1U and 2U Twin™, 2U Twin²™, 1U and 2U TwinPro™, 4U FatTwin™, and new 2U BigTwin™ are optimized for density, performance and efficiency for customers' storage, HPC, Hyper-converged infrastructure (HCI) and cloud computing requirements. The new 2U four node BigTwin delivers double the density of traditional rackmounts while supporting max performance and functionality with up to 205 watt Intel Xeon Scalable Processors, 24 DIMMS and All-Flash NVMe.

Our Ultra Server systems in 1U and 2U platforms are designed to deliver performance, flexibility, scalability, and serviceability that are ideal for demanding enterprise workloads. They allow enterprise IT professionals the ability to select a single server platform that can easily be reconfigured for many applications, to reduce qualification time and to manage the need for excessive spares inventories.

Our GPU or Accelerated Computing server systems in 1U, 2U, 4U, 7U and blade platforms achieve higher parallel processing capability with advanced GPU designs, and provide high performance in calculation-intensive applications. We have introduced a complete portfolio of Xeon Phi and Nvidia Pascal based systems.

Our MP product line supports four and eight socket configurations for high performance memory intensive enterprise applications with 96 DIMMS for up to 12 terabytes memory capacity and 23 PCI-E expansion slots. We recently expanded the offerings to support SAP Hana in-memory databases with optimal performance.

Our Data Center Optimized ("DCO") server systems deliver superior performance-per-watt to optimize data center TCO with an improved thermal architecture utilizing power efficient components and offset processors to help eliminate CPU preheating and support a 5+ year product life cycle.

Our MicroCloud server systems are high density, multi-node UP servers with up to 24 hot-pluggable nodes in a compact 3U form factor. MicroCloud integrates advanced technologies within a compact functional design to deliver high performance in environments with space and power constraints. These combined features provide a cost-effective solution for IT professionals implementing new hosting architectures for SMB and Public/Private Cloud Computing applications.

Our IoT/embedded server systems are compact, smart and secure products that reside on the edge of the network, connecting smart sensors and devices to the cloud over wireless or local networks (for example, 5G, LAN, WiFi, Zigbee and RF). These server systems are built on open architecture to ensure interoperability between systems, for ease of services deployment, and to enable a broad ecosystem of solution providers. The IoT/embedded server systems empower users to securely aggregate, share, and filter data for analysis. These server systems help ensure that data generated by devices can travel securely and safely from the edge to the cloud and back - without replacing existing infrastructure.

Our internally developed switch products 1G/10G/40G/100G Ethernet, InfiniBand and Omni Path switches for rack-mount servers help us to offer more complete solutions for our customers.

Our SuperRack total server solutions offer a wide range of flexible accessory options including front, rear and side expansion units to provide modular solutions for system configuration. Data center, Cloud, HPC computing and server farm customers can use us as a one-stop shop for all of their IT hardware needs. Our SuperRack total solutions offer easy installation and rear access with no obstructions for hot-swap devices, user-friendly cabling and cable identification, and effortless integration of our high density server, storage and blade systems.

Server Software Management Solutions

Our remote system management solutions, such as our Server Management suite ("SSM"), including Supermicro Power Management software ("SPM"), Supermicro Update Manager ("SUM") and SuperDoctor 5 ("SD5"), have been designed to manage large-scale heterogeneous hyper scale data center environments. SPM is designed specifically for HPC/Data Center cluster deployment and management. We have also partnered with certain software suppliers for software solutions that are integrated with our server systems.

Server Subsystems and Accessories

We offer a large array of modular server subsystems and accessories. These components are the foundation of our server solutions and span product offerings from the entry-level single and dual processor server segment to the high-end multi-processor market. The majority of the subsystems and accessories we sell individually are optimized to work together and are ultimately integrated into complete server systems.

Serverboards

We design our serverboards with the latest hardware technologies and infrastructure software. Each serverboard is designed and optimized to adhere to specific physical, electrical and design requirements in order to work with certain combinations of chassis and power supplies and achieve maximum functionality. For our rackmount server systems, we not only adhere to SSI specifications, but our customized specifications provide an advanced set of features that increase the functionality and flexibility of our products.

Chassis and Power Supplies

Our chassis are designed to efficiently house our servers while maintaining interoperability, adhering to industry standards and increasing output efficiency through power supply design. We believe that our latest generation of power supplies achieves the maximum power efficiency available in the industry. Our Battery Backup Power ("BBP") Module provides backup power to systems during an electricity outage and provides flexible backup power capability and reduces total cost of ownership. Our server chassis come with hot-plug, heavy-duty fans, fan speed control and an advanced air shroud design to maximize airflow redundancy. Our Powerstick design provides the slim form factor of a redundant power supply that increases system computing and storage density across our multiple product lines.

Supermicro Global Services

Our Supermicro Global Services are comprised of customer support services and hardware enhanced services. Both customer support services and hardware enhanced services develop and implement services solutions for our direct and OEM customers as well as our distributors. Services are provided to our customers directly or through approved distributors and third-party partners.

Support Services: Our customer support services offer market competitive warranties, generally from one to three years, and warranty extension options for products sold by our direct sales team and approved distributors. Our customer support team provides ongoing maintenance and technical support for our products through our website and 24-hour continuous direct phone based support.

Hardware Enhanced Services: Our strategic direct and OEM customers may purchase a variety of on-site support service plans. Our service plans vary depending on specific services, response times, coverage hours and duration, repair priority levels, spare parts requirements, logistics, data privacy and security needs. Our hardware enhanced services team provides help desk services and product on-site support for our server systems.

Our services include server system integration, configuration and software upgrades and updates. We also identify service requirements, create and execute project plans, conduct verification testing and training and provide technical documentation.

Research and Development

We perform the majority of our research and development activities in-house in San Jose, California, increasing the communication and collaboration between design teams to streamline the development process and reducing time-to-market. We believe that the combination of our focus on internal research and development activities, our close working relationships with customers and vendors and our modular design approach allows us to minimize time-to-market. We continue to invest in

reducing our design and manufacturing costs and improving the performance, cost-effectiveness and thermal and space-efficiency of our solutions.

Our research and development teams focus on the development of new and enhanced products that can support emerging innovations while highly optimizing the overall system performance. Much of our research and development activity relates to the new product cycles of leading processor vendors. We work closely with Intel, Nvidia, and AMD among others, to develop products that are compatible with the latest generation of industry standard technologies under development. Our collaborative approach with these vendors allows us to coordinate the design of our new products with their product release schedules, thereby enhancing our ability to rapidly introduce new products incorporating the latest technology. We work closely with their respective development teams to optimize system performance and reduce system level issues. Similarly, we work very closely with our customers to identify their needs and develop our new product plans accordingly.

As of June 30, 2017, we had 1,254 employees and 14 engineering consultants dedicated to research and development. Our total research and development expenses were \$144.0 million, \$124.2 million, and \$101.4 million for fiscal years 2017, 2016 and 2015, respectively.

Customers

For fiscal year 2017, our products were purchased by over 900 customers, in 110 countries. These customers represent a diverse set of market verticals including cloud computing, data center, enterprise, artificial intelligence and machine learning, big data, HPC and IoT/embedded. In fiscal year 2017, no customer represented greater than 10% of our total net sales. In fiscal years 2016 and 2015, sales to SoftLayer, a division of IBM Corporation, represented 11.4% and 10.4%, respectively, of our total net sales.

Sales and Marketing

Our sales and marketing activities are conducted through a combination of our direct sales force and indirect sales channels. As of June 30, 2017, our sales and marketing team consisted of 358 employees and 37 independent sales representatives in 23 locations worldwide.

Our direct sales force is focused on selling complete systems and solutions, including management software and global services to large scale cloud service, enterprise and OEM customers.

We work with distributors, resellers, system integrators, and OEMs to market and sell customized solutions to their end customers. We provide sales and marketing assistance and training to our distributors and OEMs, who in turn provide service and support to end customers. We leverage our relationships with key distributors and OEMs, to penetrate select industry segments where our products can provide a superior alternative to existing solutions.

We maintain close contact with our distributors and end customers. We often collaborate during the sales process with our distributors and the customer's technical point of contact to help determine the optimal system configuration for the customer's needs. Our interaction with distributors and end customers allows us to monitor customer requirements and develop new products to better meet their needs.

International Sales

Our international sales efforts are supported both by our international offices in the Netherlands, Taiwan, United Kingdom, China and Japan as well as by our United States sales team. Product fulfillment and first level support for our international customers are provided by Supermicro Global Services and our distributors and OEMs. Sales to customers located outside of the United States represented 42.8%, 36.7% and 41.2% of net sales in fiscal years 2017, 2016 and 2015, respectively. Our long-lived assets located outside of the United States represented 22.1%, 24.0% and 23.8% of total long-lived assets in fiscal years 2017, 2016 and 2015, respectively. See Part II, Item 8, Note 16, "Segment Reporting" to the consolidated financial statements in this Annual Report on Form 10-K for a summary of international net sales and long-lived assets by geographic region.

Marketing

Our marketing programs are designed to create global awareness for our company, understanding of the unique value we bring to customers, and inform existing and potential customers, the trade press, distributors and OEMs about the capabilities and benefits of using our products and solutions. Our marketing efforts support the sale and distribution of our

products through direct sales and distribution channels. We rely on a variety of marketing vehicles, including advertising, public relations, web, social media, participation in industry trade shows and conferences to help gain market acceptance. We provide funds for cooperative marketing to our distributors and partners to scale the reach of our marketing efforts. We also utilize our suppliers' cooperative marketing programs and jointly benefit from their marketing development funds.

Intellectual Property

We seek to protect our intellectual property rights with a combination of patents, trademarks, copyrights, trade secret laws and disclosure restrictions. We rely primarily on trade secrets, technical know-how and other unpatented proprietary information relating to our design and product development activities. We also enter into confidentiality and proprietary rights agreements with our employees, consultants and other third parties and control access to our designs, documentation and other proprietary information.

Manufacturing and Quality Control

We manufacture the majority of our systems at our San Jose, California headquarters. We believe we are the only major Server and Storage vendor that designs, develops and manufactures the majority of their systems in the United States. Global assembly, test and quality control of our servers are performed at our manufacturing facilities in San Jose, California, the Netherlands and Taiwan. Each of our facilities has been certified by Quality / Environmental Management System or, Q/EMS, according to ISO 9001, ISO 14001 and ISO 13485 standards. Our suppliers and contract manufacturers are required to support the same standards in order to maintain consistent product and service quality and continuous improvement of quality and environmental performance.

We use several third-party suppliers and contract manufacturers for materials and sub-assemblies, such as serverboards, chassis, disk drives, power supplies, fans and computer processors. We believe that selectively using outsourced manufacturing services allows us to focus on our core competencies in product design and development and increases our operational flexibility. We believe our manufacturing strategy allows us to adjust manufacturing capacity in response to changes in customer demand and to rapidly introduce new products to the market. We use Ablecom Technology, Inc. ("Ablecom") and its affiliate Compuware Technology, Inc. ("Compuware"), both of which are related parties, for contract design and manufacturing coordination support. We work with Ablecom to optimize modular designs for our chassis and certain of our other components. Ablecom also coordinates the manufacturing of chassis for us. In addition to providing a large volume of contract manufacturing services for us, Ablecom warehouses for us a number of components and subassemblies manufactured by multiple suppliers prior to shipment to our facilities in the United States, Europe and Asia. We also have a series of agreements with Compuware, including multiple product development, production and service agreements, product manufacturing agreements, and lease agreements for office space.

We monitor our inventory on a continuous basis in order to be able to meet customer orders and to avoid inventory obsolescence. Due to our modular designs, our inventory can generally be used with multiple different products, further reducing the risk of inventory write-downs.

Competition

The market for our products is highly competitive, rapidly evolving and subject to new technological developments, changing customer needs and new product introductions. In particular, in recent years the market has been subject to substantial change. We compete primarily with large vendors of X86 general purpose servers and components. In addition, we also compete with a number of smaller vendors that specialize in the sale of server components and systems. Over the last several years, we have experienced increased competition from Original Design Manufacturers ("ODMs") that benefit from very low cost manufacturing and are increasingly offering their own branded products. We believe our principal competitors include:

- Global technology vendors such as Cisco, Dell, Hewlett-Packard Enterprise, IBM, Inspur, Lenovo, and Huawei; and
- ODMs, such as Quanta Computer, Inc. and Asus Tek Computer, Inc.

The principal competitive factors in our market include the following:

- First to market with new emerging technologies;
- High product performance, efficiency and reliability;
- Early identification of emerging opportunities;
- Cost-effectiveness;

- Interoperability of products;
- Scalability; and
- Localized and responsive customer support on a worldwide basis.

We believe that we compete favorably with respect to most of these factors. However, most of our competitors have longer operating histories, significantly greater resources, greater name recognition and deeper market penetration. They may be able to devote greater resources to the development, promotion and sale of their products than we can, which could allow them to respond more quickly to new technologies and changes in customer needs. See also the risk factor in Part I, Item 1A, titled “The market in which we participate is highly competitive, and if we do not compete effectively, we may not be able to increase our market penetration, grow our net sales or improve our gross margins.”

Employees

As of June 30, 2017, we employed 2,996 full time employees, consisting of 1,254 employees in research and development, 358 employees in sales and marketing, 296 employees in general and administrative and 1,088 employees in manufacturing. Of these employees, 1,943 employees are based in our Silicon Valley facilities. We consider our highly qualified and motivated employees to be a key factor in our business success. Our employees are not represented by any collective bargaining organization and we have never experienced a work stoppage. We believe that our relations with our employees are good.

Corporate Information

Supermicro was founded, and maintains our worldwide headquarters and the majority of our employees, at our Green Computing Park facility in San Jose, California. We are one of the largest employers in the City of San Jose and an active member of the San Jose and Silicon Valley community.

We were incorporated in California in September 1993. We reincorporated in Delaware in March 2007. Our common stock is quoted on the OTC Markets under the symbol "SMCI." Our principal executive offices are located at 980 Rock Avenue, San Jose, CA 95131 and our telephone number is (408) 503-8000. Our website address is www.supermicro.com.

Financial Information about Segments and Geographic Areas

Please see Part II, Item 8, Note 16, “Segment Reporting” to the consolidated financial statements in this Annual Report on Form 10-K for information regarding our international operations, and see Part II, Item 1A, “Risk Factors” for further information on risks attendant to our international operations.

Working Capital

We focus considerable attention on managing our inventories and other working-capital-related items. We manage inventories by communicating with our customers and partners and then using our industry experience to forecast demand. We then place manufacturing orders for our products that are based on forecasted demand. We generally maintain substantial inventories of our products because the computer server industry is characterized by short lead time orders and quick delivery schedules.

Available Information

Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to reports filed or furnished pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) are available free of charge, on or through our website at www.supermicro.com, as soon as reasonably practicable after we electronically file such reports with, or furnish those reports to, the SEC. Information contained on our website is not incorporated by reference in, or made part of this Annual Report on Form 10-K or our other filings with or reports furnished to the SEC. The SEC also maintains a website that contains our SEC filings. The address of the site is www.sec.gov. Further, a copy of this Annual Report on Form 10-K is located at the SEC’s Public Reference Room at 100 F Street, NE, Washington, D.C. 20549. Information on the operation of the Public Reference Room can be obtained by calling the SEC at 1-800-SEC-0330.

Item 1A. Risk Factors

Risks Related to Our Investigation, Procedures and Analysis, Consolidated Financial Statements, Internal Control Over Financial Reporting and Related Matters

We face risks related to being delinquent in our SEC reporting obligations if we are unable to resume a timely filing schedule.

Due to the circumstances discussed in the Explanatory Note and in Part II, Item 8, Note 19, “Restatement of Previously Issued Consolidated Financial Statements” to the consolidated financial statements in this Annual Report on Form 10-K and “Financial Statements and Supplementary Data” contained elsewhere in this Annual Report on Form 10-K, our SEC filings, including this Annual Report on Form 10-K, our Quarterly Reports on Form 10-Q for the quarterly periods ended September 30, 2017, December 31, 2017, and March 31, 2018 (the “2018 Form 10-Qs”), our Annual Report on Form 10-K for the fiscal year ended June 30, 2018 (the “2018 Form 10-K”), and our Quarterly Reports on Form 10-Q for the quarterly periods ended September 30, 2018, December 31, 2018 and March 31, 2019 (the “2019 Form 10-Qs”, and collectively with the 2018 Form 10-Qs and the 2018 Form 10-K, the “Delinquent Reports”) are delinquent. We cannot ensure when we will file our Delinquent Reports and resume a timely filing schedule with respect to our future SEC reports. We expect to continue to face many of the risks and challenges related to the Investigation, Procedures and Analysis, including the following:

- We may fail to remediate material weaknesses in our internal control over financial reporting and other material weaknesses may be identified in the future, which would adversely affect the accuracy and timing of our financial reporting;
- Failure to timely file our SEC reports and make our current financial information available, has placed, and will continue to place, downward pressure on our stock price and result in the continued inability of our employees to sell the shares of our common stock underlying their awards granted pursuant to our equity compensation plans, which has adversely affected, and may continue adversely affect, hiring and employee retention;
- Further delay in filing our SEC reports will delay our ability to seek the relisting of our common stock on a national securities exchange, and as a result, may continue to reduce the liquidity of our common stock;
- Litigation and claims as well as regulatory examinations, investigations, proceedings and orders arising out of our failure to file SEC reports on a timely basis, including the reasons and causes for such failure to file, will continue to divert management attention and resources from the operation of our business;
- We may not be able to recapture lost business or business opportunities due to ongoing reputational harm;
- Noncompliance with the covenants in our revolving credit facility will prohibit us from borrowing under the facility unless we are able to obtain additional amendments to the facility or waivers of the covenants from the lender; and
- Negative reports or actions on our commercial credit ratings would increase our costs of, or reduce our access to, future commercial credit arrangements and limit our ability to refinance existing indebtedness.

If one or more of the foregoing risks or challenges persist, our business, operations and financial condition are likely to be materially and adversely affected.

We have identified material weaknesses in our internal control over financial reporting, which could, if not remediated, adversely affect our ability to report our financial condition and results of operations in a timely and accurate manner.

We have concluded that our internal control over financial reporting was not effective as of June 30, 2017 due to the existence of material weaknesses in such controls, and we have also concluded that our disclosure controls and procedures were not effective as of June 30, 2017 due to material weaknesses in our internal control over financial reporting, all as described in Part II, Item 9A, “Controls and Procedures” of this Annual Report on Form 10-K. While having initiated remediation measures to address the identified weaknesses, we cannot provide assurance that our remediation efforts will be adequate to allow us to conclude that such controls will be effective in the future. In addition, because we are a large accelerated filer, we are required to file disclosure and financial statements sooner than companies that are non-accelerated filers, accelerated filers or smaller reporting companies, which gives us less time to fully remediate our material weaknesses by the filing deadlines. We also cannot assure you that additional material weaknesses in our internal control over financial reporting will not arise or be identified in the future. We intend to continue our control remediation activities and to continue to improve our overall control environment and our operational, information technology, financial systems, and infrastructure procedures and controls, as well as to continue to train, retain and manage our personnel who are essential to effective internal controls. In doing so, we will continue to incur expenses and expend management time on compliance-related issues. In addition, we previously identified a material weakness in our internal control over financial reporting related to the revenue recognition of contracts with extended product warranties that impacted prior periods. If we are unable to successfully complete our remediation efforts or favorably

assess the effectiveness of our internal control over financial reporting, our operating results, financial position, ability to accurately report our financial results and timely file our SEC reports, and stock price could be adversely affected.

Moreover, because of the inherent limitations of any control system, material misstatements due to error or fraud may not be prevented or detected on a timely basis, or at all. If we are unable to provide reliable and timely financial reports in the future, our business and reputation may be further harmed. Restated financial statements and failures in internal controls may also cause us to fail to meet reporting obligations, negatively affect investor and customer confidence in our management and the accuracy of our financial statements and disclosures, or result in adverse publicity and concerns from investors and customers, any of which could have a negative effect on the price of our common stock, subject us to further regulatory investigations and penalties or stockholder litigation, and have a material adverse impact on our business and financial condition.

The subject matters of the Investigation, Procedures and Analysis and the findings thereof have caused substantial delays in filing this Annual Report on Form 10-K and the Delinquent Reports, which may result in future delays in our SEC reporting.

Our ability to resume a timely filing schedule with respect to our SEC reporting is subject to a number of contingencies, including whether and how quickly we are able to effectively remediate the identified material weaknesses in our internal control over financial reporting. It is uncertain when we will resume a timely filing schedule with respect to our future SEC reporting requirements, including our Delinquent Reports. It is likely that future reports will become delinquent until the Delinquent Reports are filed with the SEC.

Investors will need to evaluate certain decisions with respect to our common stock in light of a lack of current financial information. Accordingly, any investment in our common stock involves a greater degree of risk. Our lack of current public information may have an adverse impact on investor confidence, which could lead to a reduction in our stock price. In addition, for so long as we are not current in our SEC filings, we are precluded from registering our securities with the SEC for offer and sale. This precludes us from raising debt or equity financing in the public markets and limits our access to the private markets and also limits our ability to use stock options and other equity-based awards to attract, retain and provide incentives to our employees.

The delisting of our common stock may have a material adverse effect on the trading and price of our common stock, and we cannot assure you that our common stock will be relisted, or that once relisted, it will remain listed.

As a result of the delay in filing our periodic reports with the SEC, we were unable to comply with Nasdaq's listing standards and our common stock was suspended from trading on The Nasdaq Global Select Market effective August 23, 2018 and formally delisted effective March 22, 2019.

The delisting of our common stock from Nasdaq may have a material adverse effect on us by, among other things, causing investors to dispose of our shares and limiting:

- The liquidity of our common stock;
- The market price of our common stock;
- The number of institutional and other investors that will consider investing in our common stock;
- The availability of information concerning the trading prices and volume of our common stock;
- The number of broker-dealers willing to execute trades in shares of our common stock; and
- Our ability to obtain equity or debt financing for the continuation of our operations.

Following the filing of our Delinquent Reports and compliance with any other prerequisite requirements, we intend to apply to relist our common stock on a national securities exchange. However, while we are working expeditiously to relist our common stock, no assurances can be provided that we will be able to do so in a timely manner or at all. If we are unable to relist our common stock, or even if our common stock is relisted, no assurance can be provided that an active trading market will develop or, if one develops, that it will continue. The lack of an active trading market may limit the liquidity of an investment in our common stock, meaning you may not be able to sell any shares of common stock you own at times, or at prices, attractive to you. Any of these factors may materially adversely affect the price of our common stock.

The outcome of litigation and other claims as well as regulatory examinations, investigations, proceedings and orders arising out of the matters that were the subject of the Investigation, Procedures and Analysis, and our failure to file SEC reports on a timely basis are unpredictable, and any orders, actions or rulings not in our favor could have a material adverse effect on our business, results of operations and financial condition.

Our company and certain of our current and former executive officers are defendants in certain legal proceedings and putative class actions. Please see Part I, Item 3, “Legal Proceedings.” These proceedings have resulted in significant expenses and the diversion of management attention from our business. In addition, the circumstances which gave rise to the Investigation, Procedures and Analysis, and the related SEC filing delays continue to create the risk of additional litigation and claims by investors and examinations, investigations, proceedings and orders by regulatory authorities. These include a broad range of potential actions that may be taken against us by the SEC or other regulatory agencies, including a cease and desist order, suspension of trading of our securities, deregistration of our securities and/or the assessment of possible civil monetary penalties. Any such further actions could be expensive and damaging to our business, results of operations and financial condition.

We have incurred and expect to continue to incur significant expenses related to the Investigation, Procedures and Analysis, the remediation of deficiencies in our internal control over financial reporting and disclosure controls and procedures, and any resulting litigation.

We have devoted and expect to continue to devote substantial internal and external resources towards remediation efforts relating to the results of the Investigation, Procedures and Analysis and revision of our previously issued consolidated financial statements, the management review process and other efforts to regain timely compliance with the filing of our future SEC periodic and other reports. As a result of these efforts, we have incurred and expect that we will continue to incur significant incremental fees and expenses for additional accounting, financial and other consulting and professional services, as well as the implementation and maintenance of systems and processes that will need to be updated, supplemented or replaced. Specifically, in connection with the Audit Committee’s Investigation, Procedures and Analysis, audit and compliance efforts and related litigation, we have incurred professional fees totaling \$40.6 million in fiscal year 2018 and \$50.7 million through the third quarter of fiscal year 2019. As described in this Annual Report on Form 10-K, we have taken a number of steps in order to strengthen our corporate culture, sales processes, and accounting function so as to allow us to be able to provide timely and accurate financial reporting. To the extent these steps are not successful, we could be required to incur significant additional time and expense. The expenses we are incurring in this regard, as well as the substantial time devoted by our management towards identifying and addressing the internal control deficiencies, could have a material adverse effect on our business, results of operations and financial condition.

The Investigation, Procedures and Analysis and the findings thereof, have diverted, and continue to divert, management and other human resources from the operation of our business. The absence of timely and accurate financial information has hindered and may in the future hinder our ability to effectively manage our business.

The Investigation, Procedures and Analysis have diverted, and continue to divert, management and other human resources from the operation of our business. The Board of Directors, members of management, and our accounting, legal, administrative and other staff have spent significant time on the Investigation, Procedures and Analysis and will continue to spend significant time on remediation of disclosure controls and procedures and internal control over our financial reporting. These resources have been, and will likely continue to be, diverted from the strategic and day-to-day management of our business and may have an adverse effect on our ability to accomplish our strategic objectives.

Our failure to file SEC reports timely and the resulting delisting of our common stock could impact our ability to comply with covenants in our debt instruments, which could adversely affect our access to outside financing.

Under the terms of the credit agreement with Bank of America, N.A. (“Bank of America”), dated April 19, 2018, we are required to deliver certain financial statements to Bank of America on a periodic basis. The delay in our SEC filings could impact our ability to comply with our financial statement delivery covenant, which could result in an event of default and eventual termination of the credit agreement. If this were to occur, we may be unable to secure outside financing, if needed, to fund ongoing operations and for other capital needs. Any sources of financing that may be available to us could also be at higher costs and require us to satisfy more restrictive covenants, which could limit or restrict our operations, cash flows and earnings. We cannot ensure that additional financing would be available to us, or be sufficient or available on satisfactory terms. In addition, unless and until we have filed all required reports with the SEC, we will be precluded from registering our securities with the SEC for offer and sale, and the failure to timely file our SEC reports will limit our ability to use “short-form” Form S-3 registration statements for registering our securities for sale with the SEC until we again meet the timely filing requirements of Form S-3.

Matters relating to or arising from the restatement and the results of the Investigation, Procedures and Analysis of our internal control over financial reporting, including adverse publicity and potential concerns from our customers, have had and could continue to have an adverse effect on our business and financial condition.

We have been and could continue to be the subject of negative publicity focused on the matters underlying the Investigation, Procedures and Analysis, the lengthy delay in filing our SEC reports, and the resulting restatement of our historical financial statements. We may be adversely impacted by negative reactions to this publicity from our customers or others with whom we do business. Concerns include the time and effort required to address our accounting and control environment and our ability to be a long-term provider to our customers. The continued occurrence of any of the foregoing could harm our business and have an adverse effect on our financial condition.

If we are unable to maintain the effectiveness of our internal control over financial reporting, our operating results, financial position and stock price could be adversely affected.

Pursuant to Section 404 of the Sarbanes-Oxley Act of 2002 (“Section 404”), our management is required to report on the effectiveness of our internal control over financial reporting in our annual reports, and annually our independent auditors must attest to and report on the effectiveness of our internal control over financial reporting. It is necessary for us to maintain effective internal control over financial reporting to prevent fraud and errors and to maintain effective disclosure controls and procedures so that we can provide timely and reliable financial and other information. A failure to maintain adequate internal controls may adversely affect our ability to provide financial statements that accurately reflect our financial condition and report information on a timely basis.

As described in Part II, Item 9A, “Controls and Procedures” of this Annual Report on Form 10-K, we have concluded that there are material weaknesses in our internal control over financial reporting and that our disclosure controls and procedures were ineffective as of June 30, 2017. We have concluded that there are material weaknesses in our internal control over financial reporting, which have adversely affected our ability to timely and accurately report our results of operations and financial condition. In addition, in November 2015, we reported a material weakness in our internal control over financial reporting related to the revenue recognition of contracts with extended product warranties. This material weakness has not been fully remediated as of the filing date of this Annual Report on Form 10-K, and we cannot ensure that other errors or material weaknesses will not be identified in the future. If we fail to maintain an effective system of internal control over financial reporting, the accuracy and timeliness of our financial reporting may be adversely affected.”

Although we are working to remediate the material weaknesses identified in the course of the Investigation, Procedures and Analysis, and are focused on re-establishing effective internal controls over financial reporting in order to prevent and detect material misstatements in our annual and quarterly financial statements and prevent fraud, we cannot ensure that such efforts will be effective. If we fail to maintain effective internal controls in future periods, this could further cause investors to lose confidence in our reported financial and other information, and our operating results, financial position and stock price could be adversely affected.

Risks Related to Our Business and Industry

Our quarterly operating results will likely fluctuate in the future, which could cause rapid declines in our stock price.

We believe that our quarterly operating results will continue to be subject to fluctuation due to various factors, many of which are beyond our control. Factors that may affect quarterly operating results include:

- Fluctuations based upon seasonality, with the quarters ending March 31 and September 30 typically being weaker;
- Fluctuations in the timing and size of large customer orders;
- Variability of our margins based on the mix of server systems, subsystems and accessories we sell and the percentage of our sales to internet data center cloud customers or certain geographical regions;
- Fluctuations in availability and costs associated with key components, particularly storage solutions, and other materials needed to satisfy customer requirements;
- The timing of the introduction of new products by leading microprocessor vendors and other suppliers;
- Changes in our product pricing policies, including those made in response to new product announcements;
- Mix of whether customer purchases are of full systems or subsystems and accessories and whether made directly or through indirect sales channels;
- The effect of mergers and acquisitions among our competitors, suppliers, customers, or partners;
- General economic conditions in our geographic markets;
- Impact of regulatory changes on our cost of doing business; and
- Costs associated with the Investigation, Procedures and Analysis and related legal proceedings.

Customers may hesitate to purchase, or continue to purchase, our products based upon our delay in filing our reports with the SEC and/or unwarranted reports about malicious chips being inserted in our products. Accordingly, it is difficult to accurately forecast our growth and results of operations on a quarterly basis. If we fail to meet expectations of investors or

analysts, our stock price may fall rapidly and without notice. Furthermore, the fluctuation of quarterly operating results may render less meaningful period-to-period comparisons of our operating results, and you should not rely upon them as an indication of future performance.

As we increasingly target larger customers and larger sales opportunities, our customer base may become more concentrated, our cost of sales may increase, our margins may be lower and our sales may be less predictable.

As our business continues to grow, we have become increasingly dependent upon larger sales to maintain our rate of growth. In particular, in recent years, we have completed larger sales to leading internet data center companies and large enterprise customers. Although no customer represented greater than 10% of our total net sales in the fiscal year ended June 30, 2017, one of our customers accounted for 11.4% and 10.4% of our net sales in the fiscal years ended June 30, 2016 and 2015, respectively. As customers buy our products in greater volumes and their business becomes a larger percentage of our net sales, we may grow increasingly dependent on those customers to maintain our growth. If our largest customers do not purchase our products at the levels, timeframes or geographies that we expect, our ability to maintain or grow our net sales will be adversely affected.

Increased sales to larger customers may also cause fluctuations in results of operations. Large orders are generally subject to intense competition and pricing pressure which can have an adverse impact on our margins and results of operations. Likewise, larger customers may seek to fulfill all or substantially all of their requirements in a single or a few orders, and not make another significant purchase for a substantial period of time. Accordingly, a significant increase in revenue during the period in which we recognize the revenue from a large customer may be followed by a period of time during which the customer purchases none or few of our products.

Additionally, as we and our partners focus increasingly on selling to larger customers and attracting larger orders, we expect greater costs of sales. Our sales cycle may become longer and more expensive, as larger customers typically spend more time negotiating contracts than smaller customers. Larger customers often seek greater levels of support in the implementation and use of our server solutions.

As a result of the above factors, our quarter-to-quarter results of operations may be subject to greater fluctuation and our stock price may be adversely affected.

We may fail to meet publicly announced financial guidance or other expectations about our business, which would cause our stock to decline in value.

We typically provide forward looking financial guidance when we announce our financial results from the prior quarter. We undertake no obligation to update such guidance at any time. Frequently in the past, our financial results have failed to meet the guidance we provided. There are a number of reasons why we have failed to meet guidance in the past and might fail again in the future, including, but not limited to, the factors described in these Risk Factors.

Increases in average selling prices for our server solutions have significantly contributed to our increases in net sales. Such prices are subject to decline if customers do not continue to purchase our latest generation products or additional components, which could harm our results of operations.

Increases in average selling prices for our server solutions have significantly contributed to our increases in net sales. As with most electronics based products, average selling prices of servers typically are highest at the time of introduction of new products, which utilize the latest technology, and tend to decrease over time as such products become commoditized and are ultimately replaced by even newer generation products. As our business continues to grow, we may increasingly be subject to this industry risk. We cannot predict the timing or amount of any decline in the average selling prices of our server solutions that we may experience in the future. In some instances, our agreements with our distributors limit our ability to reduce prices unless we make such price reductions available to them, or price protect their inventory. If we are unable to decrease per unit manufacturing costs faster than the rate at which average selling prices continue to decline, our business, financial condition and results of operations will be harmed.

Our cost structure and ability to deliver server solutions to customers in a timely manner may be adversely affected by volatility of the market for core components and materials for our products.

Prices of materials and core components utilized in the manufacture of our server solutions, such as serverboards, chassis, central processing units (“CPUs”), memory and hard drives, represent a significant portion of our cost of sales. We generally do not enter into long-term supply contracts for these materials and core components, but instead purchase these

materials and components on a purchase order basis. Prices of these core components and materials are volatile, and, as a result, it is difficult to predict expense levels and operating results. In addition, if our business growth renders it necessary or appropriate to transition to longer term contracts with materials and core component suppliers, our costs may increase and our gross margins could correspondingly decrease.

Because we often acquire materials and core components on an as needed basis, we may be limited in our ability to effectively and efficiently respond to customer orders because of the then-current availability or the terms and pricing of materials and core components. Our industry has experienced materials shortages and delivery delays in the past, and we may experience shortages or delays of critical materials in the future. From time to time, we have been forced to delay the introduction of certain of our products or the fulfillment of customer orders as a result of shortages of materials and core components, which can adversely impact our revenue. For example, our net sales were adversely impacted in fiscal years 2013 and 2012 by disk drive shortages resulting from flooding in Thailand. In other periods, our cost of sales as a percentage of revenue has been adversely impacted by higher component prices resulting from shortages. For example, our gross margin was adversely impacted in the quarters ended December 31, 2016, March 31, 2017 and June 30, 2017 due to higher costs related to shortages of memory and solid-state drives ("SSD"). If shortages or delays arise, the prices of these materials and core components may increase or the materials and core components may not be available at all. In the event of shortages, some of our larger competitors may have greater abilities to obtain materials and core components due to their larger purchasing power. We may not be able to secure enough core components or materials at reasonable prices or of acceptable quality to build new products to meet customer demand, which could adversely affect our business, results of operations and financial condition. In addition, from time to time, we have accepted customer orders with various types of component pricing protection. Such arrangements have increased our exposure to component pricing fluctuations and have adversely affected our financial results in certain quarters.

If we were to lose any of our current supply or contract manufacturing relationships, the process of identifying and qualifying a new supplier or contract manufacturer who will meet our quality and delivery requirements, and who will appropriately safeguard our intellectual property, may require a significant investment of time and resources, adversely affecting our ability to satisfy customer purchase orders and delaying our ability to rapidly introduce new products to market. Similarly, if any of our suppliers were to cancel, materially change contracts or commitments to us or fail to meet the quality or delivery requirements needed to satisfy customer demand for our products, whether due to shortages or other reasons, our reputation and relationships with customers could be damaged. We could lose orders, be unable to develop or sell some products cost-effectively or on a timely basis, if at all, and have significantly decreased revenues, margins and earnings, which would have a material adverse effect on our business, results of operations and financial condition.

We may lose sales or incur unexpected expenses relating to insufficient, excess or obsolete inventory.

As a result of our strategy to provide greater choice and customization of our products to our customers, we are required to maintain a high level of inventory. If we fail to maintain sufficient inventory, we may not be able to meet demand for our products on a timely basis, and our sales may suffer. If we overestimate customer demand for our products, we could experience excess inventory of our products and be unable to sell those products at a reasonable price, or at all. As a result, we may need to record higher inventory reserves. In addition, from time to time we assume greater inventory risk in connection with the purchase or manufacture of more specialized components in connection with higher volume sales opportunities. We have from time to time experienced inventory write downs associated with higher volume sales that were not completed as anticipated. We expect that we will experience such write downs from time to time in the future related to existing and future commitments. Excess or obsolete inventory levels for these or other reasons could result in unexpected expenses or increases in our reserves against potential future charges which would adversely affect our business, results of operations and financial condition.

We may encounter difficulties with our ERP systems.

We commenced using a new enterprise resource planning ("ERP") system in the United States in July 2015 and in Taiwan and the Netherlands in January 2016. We have incurred and expect to continue to incur additional expenses related to our ERP systems, as we continue to further enhance and develop them, including by automating certain internal controls. Many companies have experienced delays and difficulties with the implementation of new or changed ERP systems that have had a negative effect on their business. Any future disruptions, delays or deficiencies in the design and further enhancement of our ERP system could result in potentially much higher costs than we currently anticipate and could adversely affect our ability to provide services, fulfill contractual obligations, file reports with the SEC in a timely manner and/or otherwise operate our business, or otherwise impact our controls environment. Any of these consequences could have an adverse effect on our business, results of operations and financial condition.

System security risks, data protection breaches, cyber-attacks and other related cyber-security issues could disrupt our internal operations or interfere with our products, and any such disruption could reduce our expected revenues, increase our expenses, damage our reputation and adversely affect our stock price.

Experienced computer programmers and hackers may be able to penetrate our network and misappropriate or compromise our confidential information or that of third parties, create system disruptions or cause shutdowns. Computer programmers and hackers also may be able to develop and deploy viruses, worms and other malicious software programs that attack our products or otherwise exploit any security vulnerabilities of our products. While we employ a number of protective measures, including firewalls, anti-virus and endpoint detection and response technologies, these measures may fail to prevent or detect attacks on our systems. We experienced unauthorized intrusions into our network between 2011 and 2018. None of these intrusions, individually or in the aggregate, has had a material adverse effect on our business, operations, or products. We have taken steps to enhance the security of our network and computer systems but, despite these efforts, we may experience future intrusions, which could adversely affect our business, operations, or products. In addition, our hardware and software or third party components and software that we utilize in our products may contain defects in design or manufacture, including “bugs” and other problems that could unexpectedly interfere with the operation or security of the products. The costs to us to eliminate or mitigate cyber or other security problems, bugs, viruses, worms, malicious software programs and security vulnerabilities could be significant and, if our efforts to address these problems are not successful, could result in interruptions, delays, cessation of service and loss of existing or potential customers that may impede our sales, manufacturing, distribution or other critical functions. Any claim that our products or systems are subject to a cyber-security risk, whether valid or not, could damage our reputation and adversely impact our revenues and results of operations.

We manage and store various proprietary information and sensitive or confidential data relating to our business as well as information from our suppliers and customers. Breaches of our or any of our third party suppliers’ security measures or the accidental loss, inadvertent disclosure or unapproved dissemination of proprietary information or sensitive or confidential data about us or our customers or suppliers, including the potential loss or disclosure of such information or data as a result of fraud, trickery or other forms of deception, could expose us or our customers or suppliers to a risk of loss or misuse of this information, result in litigation and potential liability for us, damage our brand and reputation or otherwise harm our business.

To the extent we experience cyber-security incidents in the future, our relationships with our customers and suppliers may be materially impacted, our brand and reputation may be harmed and we could incur substantial costs in responding to and remediating the incidents and in resolving any investigations or disputes that may arise with respect to them, any of which would cause our business, operations, or products to be adversely affected. In addition, the cost and operational consequences of implementing and adding further data protection measures could be significant.

Because our products and services may store, process and use data, some of which contains personal information, we are subject to complex and evolving federal, state and foreign laws and regulations regarding privacy, data protection and other matters, which are subject to change.

We are subject to a variety of laws and regulations in the United States and other countries that involve matters central to our business, including with respect to user privacy, rights of publicity, data protection, content, protection of minors and consumer protection. These laws can be particularly restrictive in countries outside the United States. Both in the United States and abroad, these laws and regulations constantly evolve and remain subject to significant change. In addition, the application and interpretation of these laws and regulations are often uncertain, particularly in the new and rapidly evolving industry in which we operate. Because our products and services store, process and use data, some of which contains personal information, we are subject to complex and evolving federal, state and foreign laws and regulations regarding privacy, data protection and other matters. Many of these laws and regulations are subject to change and uncertain interpretation and even our inadvertent failure to comply with such laws and regulations could result in investigations, claims, damages to our reputation, changes to our business practices, increased cost of operations and declines in user growth, retention or engagement, any of which could materially adversely affect our business, results of operations and financial condition. Costs to comply with and implement these privacy-related and data protection measures could be significant.

Global privacy legislation, enforcement, and policy activity for privacy and data protection are rapidly expanding and creating a complex regulatory compliance environment. Costs to comply with and implement these privacy-related and data protection measures could be significant. For example, the EU General Data Protection Regulation 2016/679 (“GDPR”), which came into effect on May 25, 2018, imposes stringent EU data protection requirements on companies established in the European Union or companies that offer goods or services to, or monitor the behavior of, individuals in the European Union. The GDPR establishes a robust framework of data subjects’ rights and imposes onerous accountability obligations on companies, with penalties for noncompliance of up to the greater of 20 million euros or four percent of annual global revenue. While we have implemented policies and procedures to address GDPR requirements, failure to comply or concerns about our

practices or compliance with GDPR or other privacy-related laws and regulations could materially adversely affect our business, results of operations and financial condition.

If we do not successfully manage the expansion of our international manufacturing capacity, our business could be harmed.

Since inception, we have conducted a substantial majority of our manufacturing operations in San Jose, California. We continue to increase our manufacturing capacity in Taiwan and in the Netherlands. If we are unable to successfully ramp up our international manufacturing capacity, we may incur unanticipated costs, difficulties in making timely delivery of products or suffer other business disruptions which could adversely impact our results of operations.

We may not be able to successfully manage our planned growth and expansion.

Over time we expect to continue to make investments to pursue new customers and expand our product offerings to grow our business rapidly. We expect that our annual operating expenses will continue to increase as we invest in sales and marketing, research and development, manufacturing and production infrastructure, and strengthen customer service and support resources for our customers. Our failure to expand operational and financial or internal control systems timely or efficiently could result in additional operating inefficiencies, which could increase our costs and expenses more than we had planned and prevent us from successfully executing our business plan. We may not be able to offset the costs of operation expansion by leveraging the economies of scale from our growth in negotiations with our suppliers and contract manufacturers. Additionally, if we increase our operating expenses in anticipation of the growth of our business and this growth does not meet our expectations, our financial results will be negatively impacted.

If our business grows, we will have to manage additional product design projects, materials procurement processes and sales efforts and marketing for an increasing number of SKUs, as well as expand the number and scope of our relationships with suppliers, distributors and end customers. If we fail to manage these additional responsibilities and relationships successfully, we may incur significant costs, which may negatively impact our operating results. Additionally, in our efforts to be first to market with new products with innovative functionality and features, we may devote significant research and development resources to products and product features for which a market does not develop quickly, or at all. If we are not able to predict market trends accurately, we may not benefit from such research and development activities, and our results of operations may suffer.

Managing the growth of our business also requires us to successfully manage a substantial increase in our number of employees. We have grown from 1,837 employees on July 1, 2014 to 2,996 employees on June 30, 2017. We must continue to hire, train and manage new employees as needed. Our failure to timely file our SEC reports and the delisting of our common stock on Nasdaq has adversely impacted, and will likely continue to adversely impact, our ability to attract new employees and retain existing employees. If our new hires perform poorly, or if we are unsuccessful in hiring, training, managing and integrating these new employees, or fail in establishing and maintaining an effective corporate culture, or if we are not successful in retaining our existing employees, our business may be harmed. The additional headcount we have added and may continue to add has increased and will continue to increase our cost base, which will make it more difficult for us to offset any future revenue shortfalls by offsetting expense reductions in the short term. If we fail to successfully manage our growth, we will be unable to execute our business plan.

Our future effective income tax rates could be affected by changes in the relative mix of our operations and income among different geographic regions and by United States federal income tax legislation, which could affect our future operating results, financial condition and cash flows.

We seek to structure our worldwide operations to take advantage of certain international tax planning opportunities and incentives. Our future effective income tax rates could be adversely affected if tax authorities challenge our international tax structure or if the relative mix of our United States and international income changes for any reason, or due to changes in United States or international tax laws. In particular, a substantial portion of our revenue is generated from customers located outside the United States. Foreign withholding taxes and United States income taxes were not provided on undistributed earnings for certain non-United States subsidiaries as of June 30, 2017, because such earnings were intended to be indefinitely reinvested in the operations of those subsidiaries. On December 22, 2017, the U.S. federal government enacted the Tax Cuts and Jobs Act ("2017 Tax Reform Act"). The 2017 Tax Reform Act significantly changed the existing U.S. corporate income tax laws by, among other things, lowering the corporate tax rate, implementing a territorial tax system, and imposing a one-time deemed repatriation toll tax on cumulative undistributed foreign earnings. We cannot predict the impact of all of these changes to our business as we have not yet finalized our fiscal year 2018 financial statements. However, it is possible that these changes

could adversely affect our business as we are currently evaluating whether to change our indefinite reinvestment assertion in light of the 2017 Tax Act, and, we consider that assessment to be incomplete.

The effectiveness of our tax planning activities is based upon certain assumptions that we make regarding our future operating performance. It is possible that we will seek to revise our tax structure further in the future. We cannot assure you that we will be able to lower our effective tax rate as a result of our current or future tax planning activities nor that such rate will not increase in the future.

If negative publicity arises with respect to us, our employees, our third-party service providers or our partners, our business and operating results could be adversely affected, regardless of whether the negative publicity is true.

Negative publicity about our company or our products, even if inaccurate, could adversely affect our reputation and the confidence in our products, which could harm our business and operating results. For example, in October 2018, Bloomberg Businessweek published an article alleging that malicious hardware chips were implanted on our motherboards during the manufacturing process at the facilities of a contract manufacturer in China. We undertook a thorough investigation of this claim with the assistance of a leading, third-party investigations firm wherein we tested a representative sample of our motherboards, including the specific type of motherboard depicted in the Bloomberg Businessweek article and motherboards purchased by companies referenced in the article, as well as more recently manufactured motherboards. After completing these examinations as well as a range of functional tests, the investigations firm reported that it had found no evidence of malicious hardware on our motherboards. In addition, neither Bloomberg Businessweek nor any of our customers have ever provided a single example of any such altered motherboard. However, despite repeated denials of any tampering by our customers and us, and the announcement of the results of this independent investigation, the impact of this false allegation continues to have a substantial negative impact on the trading price of our common stock as well as our reputation.

Harm to our reputation can also arise from many other sources, including employee misconduct, as has been experienced in the past, and misconduct by our partners and outsourced service providers. Additionally, negative publicity with respect to our partners or service providers could also affect our business and operating results to the extent that we rely on these partners or if our customers or prospective customers associate our company with these partners.

The market in which we participate is highly competitive, and if we do not compete effectively, we may not be able to increase our market penetration, grow our net sales or improve our gross margins.

The market for server solutions is intensely competitive and rapidly changing. Barriers to entry in our market are relatively low and we expect increased challenges from existing as well as new competitors. Some of our principal competitors offer server solutions at a lower price, which has resulted in pricing pressures on sales of our server solutions. We expect further downward pricing pressure from our competitors and expect that we will have to price some of our server solutions aggressively to increase our market share with respect to those products or geographies, particularly for internet data center customers and other large sale opportunities. If we are unable to maintain the margins on our server solutions, our operating results could be negatively impacted. In addition, if we do not develop new innovative server solutions, or enhance the reliability, performance, efficiency and other features of our existing server solutions, our customers may turn to our competitors for alternatives. In addition, pricing pressures and increased competition generally may also result in reduced sales, less efficient utilization of our manufacturing operations, lower margins or the failure of our products to achieve or maintain widespread market acceptance, any of which could have a material adverse effect on our business, results of operations and financial condition.

Our principal competitors include global technology companies such as Cisco, Dell, Hewlett-Packard Enterprise, IBM, Inspur, Lenovo and Huawei. In addition, we also compete with a number of other vendors who also sell application optimized servers, contract manufacturers and original design manufacturers (“ODMs”), such as Quanta Computer, Inc. and AsusTek Computer, Inc. ODMs sell server solutions marketed or sold under a third-party brand.

Many of our competitors enjoy substantial competitive advantages, such as:

- Greater name recognition and deeper market penetration;
- Longer operating histories;
- Larger sales and marketing organizations and research and development teams and budgets;
- More established relationships with customers, contract manufacturers and suppliers and better channels to reach larger customer bases and larger sales volume allowing for better costs;
- Larger customer service and support organizations with greater geographic scope;
- A broader and more diversified array of products and services; and

- Substantially greater financial, technical and other resources.

Some of our current or potential ODM competitors are also currently or have in the past been suppliers to us. As a result, they may possess sensitive knowledge or experience which may be used against us competitively and/or which may require us to alter our supply arrangements or sources in a way which could adversely impact our cost of sales or results of operations.

Our competitors may be able to respond more quickly and effectively than we can to new or changing opportunities, technologies, standards or customer requirements. Competitors may seek to copy our innovations and use cost advantages from greater size to compete aggressively with us on price. Certain customers are also current or prospective competitors and as a result, assistance that we provide to them as customers may ultimately result in increased competitive pressure against us. Furthermore, because of these advantages, even if our application optimized server solutions are more effective than the products that our competitors offer, potential customers might accept competitive products in lieu of purchasing our products. The challenges we face from larger competitors will become even greater if consolidation or collaboration between or among our competitors occurs in our industry. Also, initiatives like the Open Compute Project (“OCP”), a project to establish more industry standard data center configurations, could have the impact of supporting an approach which is less favorable to the flexibility and customization that we offer. These changes could have a significant impact on the market and impact our results of operations. For all of these reasons, we may not be able to compete successfully against our current or future competitors, and if we do not compete effectively, our ability to increase our net sales may be impaired.

Any failure to adequately expand or retain our sales force will impede our growth.

We expect that our direct sales force will continue to grow as larger customers increasingly require a direct sales approach. Competition for direct sales personnel with the advanced sales skills and technical knowledge we need is intense. Our ability to grow our revenue in the future will depend, in large part, on our success in recruiting, training, retaining and successfully managing sufficient qualified direct sales personnel. We have traditionally experienced much greater turnover in our sales and marketing personnel as compared to other departments and other companies. New hires require significant training and may take six months or longer before they reach full productivity. Our recent hires and planned hires may not become as productive as we would like, and we may be unable to hire sufficient numbers of qualified individuals in the future in the markets where we do business. If we are unable to hire, develop and retain sufficient numbers of productive sales personnel, our customer relationships and resulting sales of our server solutions will suffer.

We must work closely with our suppliers to make timely new product introductions.

We rely on our close working relationships with our suppliers, including Intel, AMD and Nvidia, to anticipate and deliver new products on a timely basis when new generation materials and core components are made available. Intel, AMD and Nvidia are the only suppliers of the microprocessors we use in our server systems. If we are not able to maintain our relationships with our suppliers or continue to leverage their research and development capabilities to develop new technologies desired by our customers, our ability to quickly offer advanced technology and product innovations to our customers would be impaired. We have no long term agreements that obligate our suppliers to continue to work with us or to supply us with products.

Our suppliers’ failure to improve the functionality and performance of materials and core components for our products may impair or delay our ability to deliver innovative products to our customers.

We need our material and core component suppliers, such as Intel, AMD and Nvidia, to provide us with core components that are innovative, reliable and attractive to our customers. Due to the pace of innovation in our industry, many of our customers may delay or reduce purchase decisions until they believe that they are receiving best of breed products that will not be rendered obsolete by an impending technological development. Accordingly, demand for new server systems that incorporate new products and features is significantly impacted by our suppliers’ new product introduction schedules and the functionality, performance and reliability of those new products. If our materials and core component suppliers fail to deliver new and improved materials and core components for our products, we may not be able to satisfy customer demand for our products in a timely manner, or at all. If our suppliers’ components do not function properly, we may incur additional costs and our relationships with our customers may be adversely affected.

We rely on a limited number of suppliers for certain raw materials used to manufacture our products.

Certain raw materials used in the manufacture of our products are available from a limited number of suppliers. Shortages could occur in these essential materials due to an interruption of supply or increased demand in the industry. One of

our suppliers accounted for 31.0%, 35.2% and 28.7% of total purchases of raw materials for the fiscal years ended June 30, 2017, 2016 and 2015, respectively. Ablecom and Compuware, related parties, accounted for 11.1%, 12.8% and 13.8% of our total cost of sales for the fiscal years ended June 30, 2017, 2016 and 2015, respectively. If any of our largest suppliers discontinue their operations or if our relationships with them are adversely impacted, we could experience a material adverse effect on our business, results of operations and financial condition.

We rely on indirect sales channels for a significant percentage of our revenue and any disruption in these channels could adversely affect our sales.

Sales of our products through third-party distributors and resellers accounted for 47.8%, 45.8% and 49.6% of our net sales in fiscal years 2017, 2016 and 2015, respectively. We depend on our distributors to assist us in promoting market acceptance of our products and anticipate that a significant portion of our revenues will continue to result from sales through indirect channels. To maintain and potentially increase our revenue and profitability, we will have to successfully preserve and expand our existing distribution relationships as well as develop new distribution relationships. Our distributors also sell products offered by our competitors and may elect to focus their efforts on these sales. If our competitors offer our distributors more favorable terms or have more products available to meet the needs of their customers, or utilize the leverage of broader product lines sold through the distributors, those distributors may de-emphasize or decline to carry our products. In addition, our distributors' order decision-making process is complex and involves several factors, including end customer demand, warehouse allocation and marketing resources, which can make it difficult to accurately predict total sales for the quarter until late in the quarter. We also do not control the pricing or discounts offered by distributors to end customers. To maintain our participation in distributors' marketing programs, in the past we have provided and expect to continue cooperative marketing arrangements or made short-term pricing concessions.

The discontinuation of cooperative marketing arrangements or pricing concessions could have a negative effect on our business, results of operations and financial condition. Our distributors could also modify their business practices, such as payment terms, inventory levels or order patterns. If we are unable to maintain successful relationships with distributors or expand our distribution channels or we experience unexpected changes in payment terms, inventory levels or other practices by our distributors, our business will suffer.

Our direct sales efforts may create confusion for our end customers and harm our relationships with our distributors and OEMs.

We expect our direct sales force to continue to grow as our business grows. As our direct sales force becomes larger, our direct sales efforts may lead to conflicts with our distributors and OEMs, who may view our direct sales efforts as undermining their efforts to sell our products. If a distributor or OEM deems our direct sales efforts to be inappropriate, the distributor or OEM may not effectively market our products, may emphasize alternative products from competitors, or may seek to terminate our business relationship. Disruptions in our distribution channels could cause our revenues to decrease or fail to grow as expected. Our failure to implement an effective direct sales strategy that maintains and expands our relationships with our distributors and OEMs could lead to a decline in sales, harm relationships and adversely affect our business, results of operations and financial condition.

Our research and development expenditures, as a percentage of our net sales, are considerably higher than many of our competitors and our earnings will depend upon maintaining revenues and margins that offset these expenditures.

Our strategy is to focus on being consistently rapid-to-market with flexible and customizable server systems that take advantage of our own internal development and the latest technologies offered by microprocessor manufacturers and other component vendors. Consistent with this strategy, we spend higher amounts, as a percentage of revenues, on research and development costs than many of our competitors. If we cannot sell our products in sufficient volume and with adequate gross margins to compensate for such investment in research and development, our earnings may be materially and adversely affected.

Our failure to deliver high quality server solutions could damage our reputation and diminish demand for our products.

Our server solutions are critical to our customers' business operations. Our customers require our server solutions to perform at a high level, contain valuable features and be extremely reliable. The design of our server solutions is sophisticated and complex, and the process for manufacturing, assembling and testing our server solutions is challenging. Occasionally, our design or manufacturing processes may fail to deliver products of the quality that our customers require. For example, in the past a vendor provided us with a defective capacitor that failed under certain heavy use applications. As a result, our product

needed to be repaired. Though the vendor agreed to pay for a large percentage of the costs of the repairs, we incurred costs in connection with the recall and diverted resources from other projects.

New flaws or limitations in our server solutions may be detected in the future. Part of our strategy is to bring new products to market quickly, and first-generation products may have a higher likelihood of containing undetected flaws. If our customers discover defects or other performance problems with our products, our customers' businesses, and our reputation, may be damaged. Customers may elect to delay or withhold payment for defective or underperforming server solutions, request remedial action, terminate contracts for untimely delivery, or elect not to order additional server solutions, which could result in an increase in our provision for doubtful accounts or in collection cycles for accounts receivable or subject us to the expense and risk of litigation. We may incur expense in recalling, refurbishing or repairing defective server solutions sold to our customers or remaining in our inventory. If we do not properly address customer concerns about our products, our reputation and relationships with our customers may be harmed. For all of these reasons, customer dissatisfaction with the quality of our products could substantially impair our ability to grow our business.

Conflicts of interest may arise between us and Ablecom and Compuware, and those conflicts may adversely affect our operations.

We use Ablecom, a related party, for contract design and manufacturing coordination support and warehousing, and Compuware, also a related party and an affiliate of Ablecom, for distribution, contract manufacturing and warehousing. We work with Ablecom to optimize modular designs for our chassis and certain of other components. We outsource to Compuware a portion of our design activities and a significant part of our manufacturing of components, particularly power supplies. Our purchases of products from Ablecom and Compuware represented 11.1%, 12.8% and 13.8% of our cost of sales for fiscal years 2017, 2016 and 2015, respectively. Ablecom and Compuware's sales to us constitute a substantial majority of Ablecom and Compuware's net sales. Ablecom and Compuware are both privately-held Taiwan-based companies. In addition, we have entered into a distribution agreement with Compuware, under which we have appointed Compuware as a nonexclusive distributor of our products in Taiwan, China and Australia.

Steve Liang, Ablecom's Chief Executive Officer and largest shareholder, is the brother of Charles Liang, our President, Chief Executive Officer and Chairman of the Board. Ablecom owns approximately 0.4% of our common stock. Charles Liang and his spouse, Sara Liu, our Co-Founder, Senior Vice President and director, jointly own approximately 10.5% of Ablecom's capital stock, while Mr. Steve Liang and other family members own approximately 36.0% of Ablecom's outstanding common stock. Certain family members of Yih-Shyan (Wally) Liaw, who until January 2018 was our Senior Vice President of International Sales and director, own approximately 11.7% of Ablecom's capital stock. Bill Liang, a brother of both Charles Liang and Steve Liang, also is a member of the Board of Directors of Ablecom.

Bill Liang is also the Chief Executive Officer of Compuware, a member of Compuware's Board of Directors and a holder of a significant equity interest in Compuware. Steve Liang is also a member of Compuware's Board of Directors and is an equity holder of Compuware.

Mr. Liang as our Chief Executive Officer and Chairman of the Board and as a significant stockholder of our company, has considerable influence over the management of our business relationships. Accordingly, we may be disadvantaged by the economic interests of Mr. Liang and Ms. Liu as stockholders of Ablecom and his personal relationship with Ablecom's Chief Executive Officer. We may not negotiate or enforce contractual terms as aggressively with Ablecom or Compuware as we might with an unrelated party, and the commercial terms of our agreements may be less favorable than we might obtain in negotiations with third parties. If our business dealings with Ablecom or Compuware are not as favorable to us as arms-length transactions, our results of operations may be harmed.

If Ablecom or Compuware are acquired or sold, new ownership could reassess the business and strategy of Ablecom or Compuware, and as a result, our supply chain could be disrupted or the terms and conditions of our agreements with Ablecom or Compuware may change. As a result, our operations could be negatively impacted or costs could increase, either of which could adversely affect our margins and results of operations.

Our reliance on Ablecom could be subject to risks associated with our reliance on a limited source of contract manufacturing services and inventory warehousing.

We plan to continue to maintain our manufacturing relationship with Ablecom in Asia. In order to provide a larger volume of contract manufacturing services for us, we anticipate that Ablecom will continue to warehouse for us an increasing number of components and subassemblies manufactured by multiple suppliers prior to shipment to our facilities in the United States and Europe. We also anticipate that we will continue to lease office space from Ablecom in Taiwan to support our

research and development efforts. We operate a joint management company with Ablecom to manage the common areas shared by us and Ablecom for our separately constructed manufacturing facilities in Taiwan.

If our commercial relationship with Ablecom deteriorates, we may experience delays in our ability to fulfill customer orders. Similarly, if Ablecom's facility in Asia is subject to damage, destruction or other disruptions, our inventory may be damaged or destroyed, and we may be unable to find adequate alternative providers of contract manufacturing services in the time that we or our customers require. We could lose orders and be unable to develop or sell some products cost-effectively or on a timely basis, if at all.

Currently, we purchase contract manufacturing services primarily for our chassis products from Ablecom. If our commercial relationship with Ablecom were to deteriorate or terminate, establishing direct relationships with those entities supplying Ablecom with key materials for our products or identifying and negotiating agreements with alternative providers of warehouse and contract manufacturing services might take a considerable amount of time and require a significant investment of resources. Pursuant to our agreements with Ablecom and subject to certain exceptions, Ablecom has the exclusive right to be our supplier of the specific products developed under such agreements. As a result, if we are unable to obtain such products from Ablecom on terms acceptable to us, we may need to discontinue a product or develop substitute products, identify a new supplier, change our design and acquire new tooling, all of which could result in delays in our product availability and increased costs. If we need to use other suppliers, we may not be able to establish business arrangements that are, individually or in the aggregate, as favorable as the terms and conditions we have established with Ablecom. If any of these things should occur, our net sales, margins and earnings could significantly decrease, which would have a material adverse effect on our business, results of operations and financial condition.

Our growth into markets outside the United States exposes us to risks inherent in international business operations.

We market and sell our systems and components both inside and outside the United States. We intend to expand our international sales efforts, especially into Asia, and we are expanding our business operations in Europe and Asia, particularly in Taiwan, the Netherlands, China and Japan. In particular, we have made, and continue to make, substantial investments for the purchase of land and the development of new facilities in Taiwan to accommodate our expected growth. Our international expansion efforts may not be successful. Our international operations expose us to risks and challenges that we would otherwise not face if we conducted our business only in the United States, such as:

- Heightened price sensitivity from customers in emerging markets;
- Our ability to establish local manufacturing, support and service functions, and to form channel relationships with resellers in non-United States markets;
- Localization of our systems and components, including translation into foreign languages and the associated expenses;
- Compliance with multiple, conflicting and changing governmental laws and regulations;
- Foreign currency fluctuations;
- Limited visibility into sales of our products by our distributors;
- Laws favoring local competitors;
- Weaker legal protections of intellectual property rights and mechanisms for enforcing those rights;
- Market disruptions created by public health crises in regions outside the United States, such as Avian flu, SARS and other diseases;
- Difficulties in staffing and managing foreign operations, including challenges presented by relationships with workers' councils and labor unions; and
- Changing regional economic and political conditions.

These factors could limit our future international sales or otherwise adversely impact our operations or our results of operations.

Our results of operations may be subject to fluctuations based upon our investment in corporate ventures.

We have a 30% minority interest in a China corporate venture that was established to market and sell corporate venture branded systems in China based upon components and technology we supply. We record earnings and losses from the corporate venture using the equity method of accounting. Our loss exposure is limited to the remainder of our equity investment in the corporate venture which as of June 30, 2017 was \$6.1 million. Although we currently do not intend to make any additional investment in the corporate venture, if we were to do so in the future, our exposure to potential losses would increase. We do not control the corporate venture and any fluctuation in the results of operations of the corporate venture or any

other similar transaction that we may enter into in the future could adversely impact, or result in fluctuations in, our results of operations.

The United States could withdraw from or materially modify certain international trade agreements, or change tariff, trade, or tax provisions related to the global manufacturing and sales of our products in ways that we currently cannot predict.

A portion of our business activities are conducted in foreign countries, including the Netherlands, Taiwan, China, United Kingdom and Japan. Our business benefits from free trade agreements, and we also rely on various U.S. corporate tax provisions related to international commerce as we manufacture, market and sell our products globally. The U.S. has announced trade policy changes, including an intention to impose new tariffs on imported goods, which have created significant uncertainty about the future relationship between the United States and other countries with respect to trade, treaties and tariffs. For example, on June 15, 2018, the Office of the United States Trade Representative (the “USTR”) published a list of products covering 818 separate U.S. tariff lines valued at approximately \$34 billion in imports from China, imposing an additional duty of 25% on the listed product lines. The list primarily covers products from industrial sectors that contribute to or benefit from the Chinese government’s “Made in China 2025” industrial policy, which include industries such as aerospace, information and communications technology, robotics, industrial machinery, new materials, and automobiles. The USTR also announced a second set of 284 proposed tariff lines, which cover approximately \$16 billion worth of imports from China, which will undergo further review in a public notice and comment process, including a public hearing. After completion of this process, USTR stated that it will issue a final determination on the products from this list that would be subject to the additional duties. We are continuing to evaluate the impact of the announced and other proposed tariffs on products and components that we import from China, and we may experience a material increase in the cost of our products, which may result in our products becoming less attractive relative to products offered by our competitors.

These developments, or the perception that any of them could occur, may have a material adverse effect on global economic conditions and the stability of global financial markets, and may significantly reduce global trade and, in particular, trade between the impacted nations and the United States. Any of these factors, or any changes to U.S. corporate tax policies related to international commerce, could depress economic activity and have a material adverse effect on our business, financial condition and results of operations.

Failure to comply with the U.S. Foreign Corrupt Practices Act, other applicable anti-corruption and anti-bribery laws, and applicable trade control laws could subject us to penalties and other adverse consequences.

We manufacture and sell our products in several countries outside of the United States, both to direct and OEM customers as well as to our distributors. Our operations are subject to the U.S. Foreign Corrupt Practices Act (the “FCPA”) as well as the anti-corruption and anti-bribery laws in the countries where we do business. The FCPA prohibits covered parties from offering, promising, authorizing or giving anything of value, directly or indirectly, to a “foreign government official” with the intent of improperly influencing the official’s act or decision, inducing the official to act or refrain from acting in violation of lawful duty or obtaining or retaining an improper business advantage. The FCPA also requires publicly traded companies to maintain records that accurately and fairly represent their transactions, and to have an adequate system of internal accounting controls. In addition, other applicable anti-corruption laws prohibit bribery of domestic government officials, and some laws that may apply to our operations prohibit commercial bribery, including giving or receiving improper payments to or from non-government parties, as well as so-called “facilitation” payments. In addition, we are subject to U.S. and other applicable trade control regulations that restrict with whom we may transact business, including the trade sanctions enforced by the U.S. Treasury, Office of Foreign Assets Control (“OFAC”). If we fail to comply with laws and regulations restricting dealings with sanctioned countries, we may be subject to civil or criminal penalties. Any future violations could have an adverse impact on our ability to sell our products to United States federal, state and local government and related entities.

In addition, while we have implemented policies, internal controls and other measures reasonably designed to promote compliance with applicable anti-corruption and anti-bribery laws and regulations, and certain safeguards designed to ensure compliance with U.S. trade control laws, our employees or agents have in the past engaged and may in the future engage in improper conduct for which we could be held responsible. If we, or our employees or agents acting on our behalf, are found to have engaged in practices that violate these laws and regulations, we could suffer severe fines and penalties, profit disgorgement, injunctions on future conduct, securities litigation, bans on transacting government business and other consequences that may have a material adverse effect on our business, results of operations and financial condition. In addition, our brand and reputation, our sales activities or our stock price could be adversely affected if we become the subject of any negative publicity related to actual or potential violations of anti-corruption, anti-bribery or trade control laws and regulations.

Any failure to protect our intellectual property rights, trade secrets and technical know-how could impair our brand and our competitiveness.

Our ability to prevent competitors from gaining access to our technology is essential to our success. If we fail to protect our intellectual property rights adequately, we may lose an important advantage in the markets in which we compete. Trademark, patent, copyright and trade secret laws in the United States and other jurisdictions as well as our internal confidentiality procedures and contractual provisions are the core of our efforts to protect our proprietary technology and our brand. Our patents and other intellectual property rights may be challenged by others or invalidated through administrative process or litigation, and we may initiate claims or litigation against third parties for infringement of our proprietary rights. Such administrative proceedings and litigation are inherently uncertain and divert resources that could be put towards other business priorities. We may not be able to obtain a favorable outcome and may spend considerable resources in our efforts to defend and protect our intellectual property.

Furthermore, legal standards relating to the validity, enforceability and scope of protection of intellectual property rights are uncertain. Effective patent, trademark, copyright and trade secret protection may not be available to us in every country in which our products are available. The laws of some foreign countries may not be as protective of intellectual property rights as those in the United States, and mechanisms for enforcement of intellectual property rights may be inadequate.

Accordingly, despite our efforts, we may be unable to prevent third parties from infringing upon or misappropriating our intellectual property and using our technology for their competitive advantage. Any such infringement or misappropriation could have a material adverse effect on our business, results of operations and financial condition.

Resolution of claims that we have violated or may violate the intellectual property rights of others could require us to indemnify our customers, resellers or vendors, redesign our products, or pay significant royalties to third parties, and materially harm our business.

Our industry is marked by a large number of patents, copyrights, trade secrets and trademarks and by frequent litigation based on allegations of infringement or other violation of intellectual property rights. Our primary competitors have substantially greater numbers of issued patents than we have which may position us less favorably in the event of any claims or litigation with them. Other third parties have in the past sent us correspondence regarding their intellectual property or filed claims that our products infringe or violate third parties' intellectual property rights. In addition, increasingly non-operating companies are purchasing patents and bringing claims against technology companies. We have been subject to several such claims and may be subject to such claims in the future.

Successful intellectual property claims against us from others could result in significant financial liability or prevent us from operating our business or portions of our business as we currently conduct it or as we may later conduct it. In addition, resolution of claims may require us to redesign our technology, to obtain licenses to use intellectual property belonging to third parties, which we may not be able to obtain on reasonable terms, to cease using the technology covered by those rights, and to indemnify our customers, resellers or vendors. Any claim, regardless of its merits, could be expensive and time consuming to defend against, and divert the attention of our technical and management resources.

If we lose Charles Liang, our President, Chief Executive Officer and Chairman, or any other current key employee or are unable to attract additional key employees, we may not be able to implement our business strategy in a timely manner.

Our future success depends in large part upon the continued service of our current executive management team and other current key employees. In particular, Charles Liang, our President, Chief Executive Officer and Chairman of the Board, is critical to the overall management of our company as well as to our strategic direction. Mr. Liang co-founded our company and has been our Chief Executive Officer since our inception. His experience in running our business and his personal involvement in key relationships with suppliers, customers and strategic partners are extremely valuable to our company. We currently do not have a succession plan for the replacement of Mr. Liang if it were to become necessary. Additionally, we are particularly dependent on the continued service of our existing research and development personnel because of the complexity of our products and technologies. Our employment arrangements with our executives and employees do not require them to provide services to us for any specific length of time, and they can terminate their employment with us at any time, with or without notice, without penalty. The loss of services of any of these executives or of one or more other key members of our team could seriously harm our business.

If we are unable to attract and integrate additional key employees in a manner that enables us to scale our business and operations effectively, or if we do not maintain competitive compensation policies to retain our employees, our ability to operate effectively and efficiently could be limited.

To execute our growth plan, we must attract additional highly qualified personnel, including additional engineers and executive staff. Competition for qualified personnel is intense, especially in Silicon Valley, where we are headquartered. We have experienced in the past and may continue to experience difficulty in hiring and retaining highly skilled employees with appropriate qualifications. Our lack of current public information precludes us from registering our securities with the SEC for offer and sale and limits our ability to use stock options and other equity-based awards to attract, retain and provide incentives to employees. Since the initiation of the Investigation, our employees have been unable to sell their holdings of our common stock, which has contributed to the loss of experienced engineering and sales personnel. If we are unable to attract and integrate additional key employees in a manner that enables us to scale our business and operations effectively, or if we do not maintain competitive compensation policies to retain our employees, our ability to operate effectively and efficiently could be limited.

Backlog does not provide a substantial portion of our net sales in any quarter.

Our net sales are difficult to forecast because we do not have sufficient backlog of unfilled orders to meet our quarterly net sales targets at the beginning of a quarter. Rather, a majority of our net sales in any quarter depend upon customer orders that we receive and fulfill in that quarter. Because our expense levels are based in part on our expectations as to future net sales and to a large extent are fixed in the short term, we might be unable to adjust spending in time to compensate for any shortfall in net sales. Accordingly, any significant shortfall of revenues in relation to our expectations would harm our operating results.

Our business and operations are especially subject to the risks of earthquakes and other natural catastrophic events.

Our corporate headquarters, including our most significant research and development and manufacturing operations, are located in the Silicon Valley area of Northern California, a region known for seismic activity. We have also established significant manufacturing and research and development operations in Taiwan which is also subject to seismic activity risks. We do not currently have a comprehensive disaster recovery program and as a result, a significant natural disaster, such as an earthquake, could have a material adverse impact on our business, operating results, and financial condition. Although we are in the process of preparing such a program, there is no assurance that it will be effective in the event of such a disaster.

Our operations involve the use of hazardous and toxic materials, and we must comply with environmental laws and regulations, which can be expensive, and may affect our business, results of operations and financial condition.

We are subject to federal, state and local regulations relating to the use, handling, storage, disposal and human exposure to hazardous and toxic materials. If we were to violate or become liable under environmental laws in the future as a result of our inability to obtain permits, human error, accident, equipment failure or other causes, we could be subject to fines, costs or civil or criminal sanctions, face third-party property damage or personal injury claims or be required to incur substantial investigation or remediation costs, which could be material, or experience disruptions in our operations, any of which could have a material adverse effect on our business, results of operations and financial condition. In addition, environmental laws could become more stringent over time imposing greater compliance costs and increasing risks and penalties associated with violations, which could harm our business, results of operations and financial condition.

We also face increasing complexity in our product design as we adjust to new and future requirements relating to the materials composition of our products, including the restrictions on lead and other hazardous substances applicable to specified electronic products placed on the market in the European Union (Restriction on the Use of Hazardous Substances Directive 2002/95/EC, also known as the RoHS Directive). We are also subject to laws and regulations such as California's "Proposition 65" which requires that clear and reasonable warnings be given to consumers who are exposed to certain chemicals deemed by the State of California to be dangerous, such as lead. We expect that our operations will be affected by other new environmental laws and regulations on an ongoing basis. Although we cannot predict the ultimate impact of any such new laws and regulations, they will likely result in additional costs, and could require that we change the design and/or manufacturing of our products, any of which could have a material adverse effect on our business, results of operations and financial condition.

We are also subject to the regulations concerning the supply of minerals coming from the conflict zones in and around the Democratic Republic of Congo. This United States legislation includes disclosure requirements regarding the use of conflict minerals mined from the Democratic Republic of Congo and adjoining countries and procedures regarding a manufacturer's efforts to prevent the sourcing of such conflict minerals. These requirements could affect the sourcing and availability of minerals used in the manufacture of semiconductor or other devices. As a result, there may only be a limited pool of suppliers

who provide conflict-free metals, and we cannot assure you that we will be able to obtain products in sufficient quantities or at competitive prices.

Risks Related to Owning Our Stock

The trading price of our common stock is likely to be volatile, and you might not be able to sell your shares at or above the price at which you purchased the shares.

The trading prices of technology company securities historically have been highly volatile and the trading price of our common stock has been and is likely to continue to be subject to wide fluctuations. Factors, in addition to those outlined elsewhere in this filing, that may affect the trading price of our common stock include:

- The risk that we are not able to relist our common stock on a national securities exchange;
- The outcome of litigation and claims as well as regulatory examinations, investigations, proceedings and orders arising out of our failure to file SEC reports on a timely basis and results of the Investigation, Procedures and Analysis;
- Actual or anticipated variations in our operating results, including failure to achieve previously provided guidance;
- Announcements of technological innovations, new products or product enhancements, strategic alliances or significant agreements by us or by our competitors;
- Changes in recommendations by any securities analysts that elect to follow our common stock;
- The financial projections we may provide to the public, any changes in these projections or our failure to meet these projections;
- False or misleading press releases or articles regarding our company or our products;
- The loss of a key customer;
- The loss of key personnel;
- Technological advancements rendering our products less valuable;
- Lawsuits filed against us, including those described in Part I, Item 3, “Legal Proceedings”;
- Changes in operating performance and stock market valuations of other companies that sell similar products;
- Price and volume fluctuations in the overall stock market;
- Market conditions in our industry, the industries of our customers and the economy as a whole; and
- Other events or factors, including those resulting from war, incidents of terrorism or responses to these events.

Future sales of shares by existing stockholders could cause our stock price to decline.

Attempts by existing stockholders to sell substantial amounts of our common stock in the public market could cause the trading price of our common stock to decline significantly. All of our shares are eligible for sale in the public market, including shares held by directors, executive officers and other affiliates, sales of which are subject to volume limitations and other requirements under Rule 144 under the Securities Act. In addition, shares subject to outstanding options and reserved for future issuance under our stock option plans are eligible for sale in the public market to the extent permitted by the provisions of various vesting agreements. If these additional shares are sold, or if it is perceived that they will be sold in the public market, the trading price of our common stock could decline.

If securities analysts do not publish research or reports about our business or if they downgrade our stock, the price of our stock could decline.

The research and reports that industry or financial analysts publish about us or our business likely have an effect on the trading price of our common stock. If an industry analyst decides not to cover our company, or if an industry analyst decides to cease covering our company at some point in the future, we could lose visibility in the market, which in turn could cause our stock price to decline. If an industry analyst downgrades our stock, our stock price would likely decline rapidly in response.

The concentration of our capital stock ownership with insiders will likely limit your ability to influence corporate matters.

As of March 31, 2019, our executive officers, directors, current five percent or greater stockholders and affiliated entities together beneficially owned 27.8% of our common stock, net of treasury stock. As a result, these stockholders, acting together, have significant influence over all matters that require approval by our stockholders, including the election of directors and approval of significant corporate transactions. Corporate action might be taken even if other stockholders oppose them.

This concentration of ownership might also have the effect of delaying or preventing a change of control of our company that other stockholders may view as beneficial.

Provisions of our certificate of incorporation and bylaws and Delaware law might discourage, delay or prevent a change of control of our company or changes in our management and, as a result, depress the trading price of our common stock.

Our certificate of incorporation and bylaws contain provisions that could discourage, delay or prevent a change in control of our company or changes in our management that the stockholders of our company may deem advantageous. These provisions:

- Establish a classified Board of Directors so that not all members of our Board are elected at one time;
- Require super-majority voting to amend some provisions in our certificate of incorporation and bylaws;
- Authorize the issuance of “blank check” preferred stock that our Board could issue to increase the number of outstanding shares and to discourage a takeover attempt;
- Limit the ability of our stockholders to call special meetings of stockholders;
- Prohibit stockholder action by written consent, which requires all stockholder actions to be taken at a meeting of our stockholders;
- Provide that the Board of Directors is expressly authorized to adopt, or to alter or repeal our bylaws; and
- Establish advance notice requirements for nominations for election to our Board or for proposing matters that can be acted upon by stockholders at stockholder meetings.

In addition, we are subject to Section 203 of the Delaware General Corporation Law, which, subject to some exceptions, prohibits “business combinations” between a Delaware corporation and an “interested stockholder,” which is generally defined as a stockholder who becomes a beneficial owner of 15% or more of a Delaware corporation’s voting stock for a three-year period following the date that the stockholder became an interested stockholder. Section 203 could have the effect of delaying, deferring or preventing a change in control that our stockholders might consider to be in their best interests.

These anti-takeover defenses could discourage, delay or prevent a transaction involving a change in control of our company. These provisions could also discourage proxy contests and make it more difficult for stockholders to elect directors of their choosing and cause us to take corporate actions other than those stockholders desire.

Our common stock is currently quoted on the OTC Market, which may have an unfavorable impact on our stock price and liquidity.

Effective at the open of business on August 23, 2018, our common stock was suspended from trading on the Nasdaq Global Select Market, and our common stock was subsequently delisted on March 22, 2019. Since the date our common stock was suspended from trading on the Nasdaq Global Select Market, our common stock has been quoted on the OTC Market. The OTC Market is a significantly more limited market than Nasdaq. The quotation of our shares on the OTC Market may result in a less liquid market available for existing and potential stockholders to trade shares of our common stock, could depress the trading price of our common stock and could have a long-term adverse impact on our ability to raise capital in the future.

We do not expect to pay any cash dividends for the foreseeable future.

We do not anticipate that we will pay any cash dividends to holders of our common stock in the foreseeable future. In addition, under the terms of the credit agreement with Bank of America, dated April 19, 2018, we cannot pay any dividends, with limited exceptions. Accordingly, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investment. Investors seeking cash dividends in the foreseeable future should not purchase our common stock.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

As of June 30, 2017, we owned approximately 1,408,000 square feet and leased approximately 558,000 square feet of office and manufacturing space.

Our principal executive offices, research and development center and production operations are located in San Jose, California where we own approximately 1,197,000 square feet of office and manufacturing space which is subject to existing term loans and revolving line of credit with \$123.2 million outstanding as of June 30, 2017. We lease approximately 246,000 square feet of warehouse space in Fremont, California under a lease that expires in July 2020, lease approximately 46,000 square feet of office space in San Jose, California under a lease that expires in January 2022, and lease approximately 5,000 square feet of office in Jersey City, New Jersey under a lease that expires in July 2020. Our European headquarters for manufacturing and service operations is located in Den Bosch, the Netherlands where we lease approximately 124,000 square feet of office and manufacturing space under two leases, which expire in July 2025 and June 2026. In Asia, our manufacturing facilities are located in Taoyuan County, Taiwan where we own approximately 211,000 square feet of office and manufacturing space on 7.0 acres of land. These manufacturing facilities are subject to an existing term loan with \$19.7 million remaining outstanding as of June 30, 2017. Our research and development center and service operations in Asia are located in an approximately 131,000 square feet facility in Taipei, Taiwan under eleven leases that expire at various dates ranging from May 2019 through January 2022. We lease approximately 3,000 square feet of office space in Shanghai and Beijing, China for sales and service operations under two leases that expire in April 2020 and August 2020, respectively. In addition, we lease approximately 2,000 square feet of office space in Japan under one lease, which expires in January 2020.

Additionally, we own 36 acres of land in San Jose, California that would allow us to expand our Green Computing Park. We remodeled one warehouse with approximately 310,000 square feet of storage space and completed the construction of a new manufacturing and warehouse building with approximately 182,000 square feet of manufacturing space in August 2015. In fiscal year 2017, we continued to engage several contractors for the development and construction of improvements on the property. We completed the construction of a second new manufacturing and warehouse building in the first quarter of fiscal year 2018. We financed this development through our operating cash flows and additional borrowings from banks. See Part II, Item 8, Note 9, "Short-term and Long-term Obligations" to the consolidated financial statements in this Annual Report on Form 10-K for a discussion of our company's short-term and long-term obligations.

We believe that our existing properties, including both owned and leased, are in good condition and are suitable for the conduct of our business.

Item 3. Legal Proceedings

From time to time, we have been involved in various legal proceedings arising from the normal course of business activities. In management's opinion, the resolution of any matters will not have a material adverse effect on our consolidated financial condition, results of operations or liquidity.

On September 4, 2015, a complaint was filed against us, our CEO, and our former CFO in the U.S. District Court for the Northern District of California (*Deason v. Super Micro Computer, Inc., et al.*, No. 15-cv-04049). The complaint claimed that the defendants violated Section 10(b) of the Securities Exchange Act of 1934 because of alleged misrepresentations and/or omissions in public statements which supposedly were revealed when we announced on August 31, 2015 that the filing of our Annual Report on Form 10-K for fiscal 2015 would be delayed to allow us to complete an investigation into certain marketing expenses. On January 12, 2018, after an initial round of successful motion to dismiss briefing leading to Plaintiff filing an amended complaint, we and the named individual defendants filed another motion to dismiss on the grounds that the amended complaint failed to state a claim because it did not plead falsity or scienter. On June 27, 2018, the Court granted our motion to dismiss without leave to amend and entered judgment in favor of us and the other defendants. On July 24, 2018, Plaintiff filed a notice of appeal to the 9th Circuit Court of Appeals; however, Plaintiff subsequently filed a voluntary notice dismissing the appeal and, thus, ending the litigation on November 1, 2018.

On February 8, 2018, two putative class action complaints were filed against us, our CEO, and our former CFO in the U.S. District Court for the Northern District of California (*Hessefort v. Super Micro Computer, Inc., et al.*, No. 18-cv-00838 and *United Union of Roofers v. Super Micro Computer, Inc., et al.*, No. 18-cv-00850). The complaints contain similar allegations, claiming that the defendants violated Section 10(b) of the Securities Exchange Act due to alleged misrepresentations and/or omissions in public statements regarding recognition of revenue. The court subsequently appointed New York Hotel Trades Council & Hotel Association of New York City, Inc. Pension Fund as lead plaintiff and it filed an amended complaint naming our Senior Vice President of Investor Relations, as an additional defendant. The court approved the parties' agreement to permit a further amendment of the complaint, which was filed on January 22, 2019. We believe the allegations filed are without merit, and intend to vigorously defend against the lawsuit.

Between late 2015 and 2017, we cooperated with the SEC in its investigation of marketing expenses that contained certain irregularities discovered by our management, which irregularities were disclosed on August 31, 2015. In addition, we have received subpoenas from the SEC in connection with the matters underlying our inability to timely file our Form 10-K for the fiscal year ending June 30, 2017. We also received a subpoena from the SEC following the false and widely-discredited reporting in October 2018 by Bloomberg Businessweek concerning our products. We are cooperating fully to comply with these government requests.

Due to the inherent uncertainties of legal proceedings, we cannot predict the outcome of these proceedings at this time, and we can give no assurance that they will not have a material adverse effect on our financial position or results of operations.

Item 4. Mine Safety Disclosures

Not applicable.

PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market Information

Effective at the open of business on August 23, 2018, our common stock was suspended from trading on the Nasdaq Global Select Market. Effective March 22, 2019, our common stock was delisted from the Nasdaq Global Select Market. Since the date our common stock was suspended from trading on the Nasdaq Global Select Market, our common stock has been quoted on the OTC Market and is currently traded under the symbol "SMCI." Prior to the suspension, we had traded on the Nasdaq Global Select Market since March 29, 2007, and prior to that time there was no public market for our common stock.

The following table sets forth, for the periods indicated, the high and low sales closing prices of our Common Stock as reported by The Nasdaq Global Select Market. On March 31, 2019, the last reported bid price of our common stock on the OTC Markets was \$21.13 per share. The OTC Markets quotations reflect inter-dealer prices, without retail mark-up, mark down or commission and may not represent actual transactions.

	High	Low
Fiscal Year 2016:		
First Quarter	\$ 30.25	\$ 24.24
Second Quarter	\$ 31.82	\$ 22.32
Third Quarter	\$ 34.08	\$ 21.52
Fourth Quarter	\$ 34.49	\$ 23.78
	High	Low
Fiscal Year 2017:		
First Quarter	\$ 26.34	\$ 19.02
Second Quarter	\$ 29.00	\$ 21.37
Third Quarter	\$ 28.85	\$ 24.60
Fourth Quarter	\$ 25.25	\$ 23.60

Holdings

As of March 31, 2019, there were 31 registered stockholders of record of our common stock. Because most of our shares are held by brokers and other institutions on behalf of stockholders, we are unable to estimate the total number of beneficial stockholders represented by these holders of record.

Dividend Policy

We have never declared or paid cash dividends on our capital stock. We intend to retain any future earnings and do not expect to pay any dividends in the foreseeable future. Under the terms of the credit agreement with Bank of America, dated April 19, 2018, we cannot pay any dividends.

Equity Compensation Plan

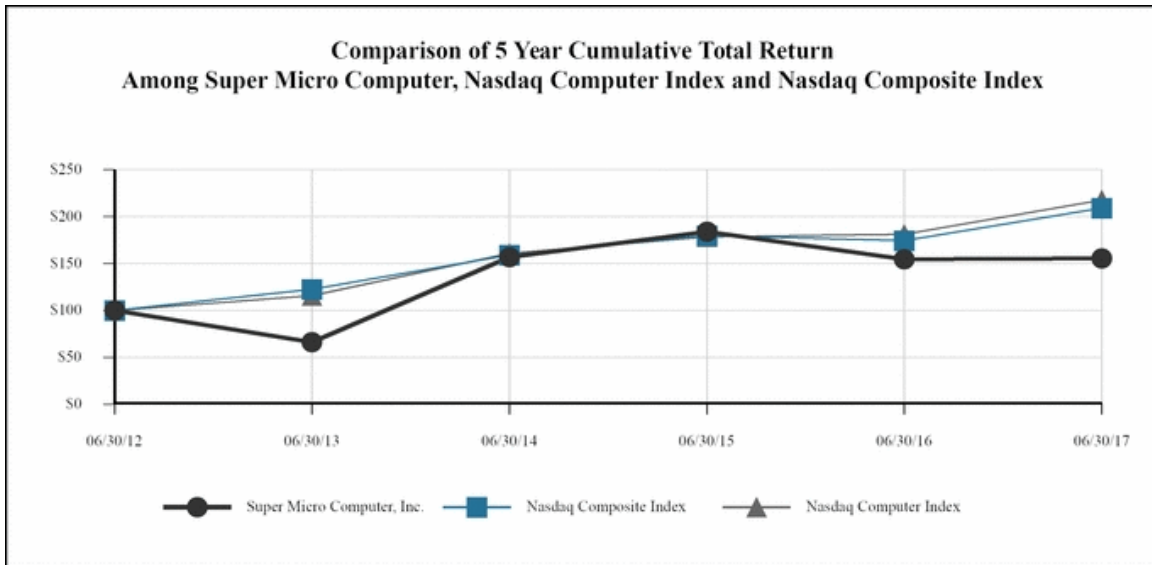
Please see Part III, Item 12, "Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters" of this report for disclosure relating to our equity compensation plans.

Stock Performance Graph

This performance graph shall not be deemed "soliciting material" or to be "filed" with the SEC for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities under that Section, and shall not be deemed to be incorporated by reference into any filing of Super Micro Computer, Inc. under the Securities Act of 1933, as amended, or the Exchange Act.

The following graph compares our cumulative five-year total stockholder return on our common stock with the cumulative return of the Nasdaq Computer Index and the Nasdaq Composite Index, which both included our common stock, for the comparable period.

The graph reflects an investment of \$100 (with reinvestment of all dividends, if any) in our common stock, the Nasdaq Computer Index and the Nasdaq Composite Index, on June 30, 2012 and our relative performance tracked through June 30, 2017. The stockholder return shown on the graph below is not necessarily indicative of future performance, and we do not make or endorse any predictions as to future stockholder returns.



	6/30/2012	6/30/2013	6/30/2014	6/30/2015	6/30/2016	6/30/2017
Super Micro Computer, Inc.	100.00	67.09	159.33	186.51	156.68	155.42
Nasdaq Composite Index	100.00	115.95	150.19	169.91	164.99	209.21
Nasdaq Computer Index	100.00	102.24	142.18	157.55	159.77	217.77

Recent Sales of Unregistered Securities

None.

Issuer Purchases of Equity Securities

None.

Item 6. Selected Financial Data

The following selected consolidated financial data is qualified by reference to, and should be read in conjunction with, our consolidated financial statements and notes thereto in Part II, Item 8, "Financial Statements and Supplementary Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Part II, Item 7, of this Annual Report on Form 10-K.

	Fiscal Years Ended June 30,			Fiscal Years Ended June 30,			Fiscal Years Ended June 30,		
	2017	2016 (As Revised) (1)	2015 (As Revised) (1)	2014 Adjustments		As Adjusted	2013 Adjustments		As Adjusted
			As Reported	(2)	As Reported		(2)		
(in thousands, except per share data)									
Consolidated Statements of Operations Data:									
Net sales	\$ 2,484,929	\$ 2,225,022	\$ 1,954,353	\$ 1,467,202	\$ (17,037)	\$ 1,450,165	\$ 1,162,561	\$ (15,332)	\$ 1,147,229
Cost of sales	2,134,971	1,894,521	1,647,769	1,241,657	(10,610)	1,231,047	1,002,508	(12,488)	990,020
Gross profit	349,958	330,501	306,584	225,545	(6,427)	219,118	160,053	(2,844)	157,209
Operating expenses:									
Research and development	143,992	124,223	101,402	84,257	917	85,174	75,208	60	75,268
Sales and marketing	66,445	58,338	47,496	38,012	264	38,276	33,785	108	33,893
General and administrative	44,646	40,449	25,040	23,017	(192)	22,825	23,902	4	23,906
Total operating expenses	255,083	223,010	173,938	145,286	989	146,275	132,895	172	133,067
Income from operations	94,875	107,491	132,646	80,259	(7,416)	72,843	27,158	(3,016)	24,142
Other income (expense), net	(1,287)	1,507	956	92	—	92	48	—	48
Interest expense	(2,300)	(1,594)	(965)	(757)	—	(757)	(610)	—	(610)
Income before income tax provision	91,288	107,404	132,637	79,594	(7,416)	72,178	26,596	(3,016)	23,580
Income tax provision	24,434	35,323	40,082	25,437	(1,342)	24,095	5,317	(473)	4,844
Net income	\$ 66,854	\$ 72,081	\$ 92,555	\$ 54,157	\$ (6,074)	\$ 48,083	\$ 21,279	\$ (2,543)	\$ 18,736
Net income per common share:									
Basic	\$ 1.38	\$ 1.50	\$ 1.99	\$ 1.24		\$ 1.10	\$ 0.50		\$ 0.45
Diluted	\$ 1.29	\$ 1.39	\$ 1.85	\$ 1.16		\$ 1.03	\$ 0.48		\$ 0.43
Shares used in per share calculation:									
Basic	48,383	47,917	46,434	43,599		43,599	41,992		41,992
Diluted	51,679	51,836	50,094	46,512		46,512	43,907		43,907
Stock-based compensation:									
Cost of sales	\$ 1,382	\$ 1,157	\$ 962	\$ 941	\$ (21)	\$ 920	\$ 953	\$ (21)	\$ 932
Research and development	12,559	10,651	9,195	6,783	147	6,930	6,527	(144)	6,383
Sales and marketing	2,144	1,934	1,601	1,260	(26)	1,234	1,541	(34)	1,507
General and administrative	3,580	3,188	2,678	2,078	(100)	1,978	2,340	(52)	2,288
Total stock-based compensation	\$ 19,665	\$ 16,930	\$ 14,436	\$ 11,062	\$ —	\$ 11,062	\$ 11,361	\$ (251)	\$ 11,110

(1) See Part II, Item 8, Note 19, "Restatement of Previously Issued Consolidated Financial Statements", in our notes to the consolidated financial statements.

(2) The adjustments are similar in nature to those discussed in Part II, Item 8, Note 19, "Restatement of Previously Issued Consolidated Financial Statements", in our notes to the consolidated financial statements.

	As of June 30,								
	2017	2016 (As Revised) (1)	2015 (As Revised) (2)	As Reported	2014 Adjustments (2)	As Adjusted	As Reported	2013 Adjustments (2)	As Adjusted
	(in thousands)								
Consolidated Balance Sheet Data:									
Cash and cash equivalents	\$ 110,606	\$ 178,820	\$ 92,920	\$ 96,872	\$ (1,390)	\$ 95,482	\$ 93,038	\$ (1,306)	\$ 91,732
Working capital	588,636	544,698	438,144	343,195	(14,255)	328,940	281,528	(9,437)	272,091
Total assets	1,515,130	1,191,483	1,122,031	796,325	29,970	826,295	632,257	38,412	670,669
Long-term obligations	68,754	85,200	26,062	16,208	4,710	20,918	16,869	2,121	18,990
Total stockholders' equity	773,846	696,653	593,585	469,231	(17,072)	452,158	373,724	(10,999)	362,725

- (1) See Part II, Item 8, Note 19, "Restatement of Previously Issued Consolidated Financial Statements", in our notes to the consolidated financial statements.
- (2) The adjustments are similar in nature to those discussed in Part II, Item 8, Note 19, "Restatement of Previously Issued Consolidated Financial Statements", in our notes to the consolidated financial statements.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion should be read in conjunction with the consolidated financial statements and related notes which appear elsewhere in this Annual Report on Form 10-K. This discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors, including those discussed below and elsewhere in this Annual Report on Form 10-K, particularly under the heading "Risk Factors." The following discussion gives effect to the restatement discussed in Part II, Item 8, Note 19, "Restatement of Previously Issued Consolidated Financial Statements" to the consolidated financial statements of this Annual Report on Form 10-K. See related discussion in the Explanatory Note.

Background of Investigation, Procedures and Analysis

See "Explanatory Note" to this Annual Report on Form-10K.

Nasdaq Delisting of our Common Stock

As a result of the delay in filing our periodic reports with the SEC and failure to hold an annual meeting, we were unable to comply with the Nasdaq listing standards and our common stock was suspended from trading on the Nasdaq Global Select Market effective August 23, 2018 and formally delisted effective March 22, 2019. Following the suspension of trading, our common stock has been quoted on the OTC Market and is currently traded under the symbol "SMCI." For further information regarding trading in our common stock, refer to Part II, Item 5, "Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities" in this Annual Report on Form 10-K.

Overview

We are a global leader in high performance, high efficiency server technology and innovation. We develop and provide end-to-end green computing solutions to the cloud computing, data center, enterprise, big data, high performance computing ("HPC" and internet of things ("IoT)/embedded markets. Our solutions range from complete server, storage, blade and workstations to full racks, networking devices, server management software and technology support and services.

We commenced operations in 1993 and have been profitable every year since inception. For fiscal years 2017, 2016 and 2015, our net income was \$66.9 million, \$72.1 million and \$92.6 million, respectively. In order to increase our sales and profits, we believe that we must continue to develop flexible and customizable server solutions and be among the first to market with new features and products. We must also continue to expand our software and customer service and support offerings, particularly as we increasingly focus on larger enterprise sales. We measure our financial success based on various indicators, including growth in net sales, gross profit margin and operating margin as key measures of profitability, and cash conversion cycle as a key measure of working capital management. Among the key non-financial indicators of our success is our ability to rapidly introduce new products and deliver the latest application optimized server solutions. In this regard, we work closely with microprocessor and other component vendors to take advantage of new technologies as they are introduced. Historically, our ability to introduce new products rapidly has allowed us to benefit from the introduction of new microprocessors and as a result we monitor the introduction cycles of Intel Corporation, Advanced Micro Devices, Inc., and Nvidia Corporation carefully. This also impacts our research and development expenditures as we continue to invest more in our current and future product development efforts.

Financial Highlights

The following is a summary of other financial highlights of fiscal year 2017:

- Net sales increased by 11.7% as compared to fiscal year 2016 primarily due to increased unit shipments, reflecting the successful execution of our strategy to ship more complete systems, which increased by 13.5% as compared to fiscal year 2016.
- Gross margin declined to 14.1% from 14.9% in fiscal year 2016 primarily due to increased component prices for memory and storage relative to our ability to pass cost increases to our customers as well as increased sales where pricing is typically more competitive and lower total capacity utilization while we ramp up use of our new facilities.

- Operating expenses increased by 14.4% as compared to fiscal year 2016, but remained approximately 10% of sales as we continued to increase our human talent, primarily with respect to further investments in research and development.
- Net income declined to \$66.9 million as compared to \$72.1 million in fiscal 2016, which was primarily due to a \$16.1 million decline in income before taxes, which was partially offset by a reduction in our effective tax rate to 26.8% as compared to 32.9% in fiscal 2016.
- Our cash and cash equivalents were \$110.6 million at the end of fiscal year 2017, compared with \$178.8 million at the end of fiscal year 2016. The decrease in our cash and cash equivalents at the end of fiscal year 2017 was primarily due to \$96.2 million of cash used in our operating activities and \$29.4 million of purchases of property, plant and equipment, of which \$16.1 million was related to property and equipment in connection with the construction of buildings at our Green Computing Park in San Jose, California, partially offset by \$66.6 million of borrowings, net of repayments.
- The cash conversion cycle is the sum of days of sales outstanding (“DSO”) and days of inventory outstanding (“DIO”), less days of purchases outstanding (“DPO”). Cash conversion cycle at the end of fiscal year 2017 was 86 days compared with 76 at the end of fiscal year 2016. DSO and DIO at the end of fiscal year 2017 were 3 days higher and 6 days higher, respectively, than at the end of fiscal year 2016. DPO at the end of fiscal year 2017 was 1 day lower than at the end of fiscal year 2016.
- Our inventory balance was \$736.7 million at the end of fiscal year 2017, compared with \$516.8 million at the end of fiscal year 2016. The increase in inventory was to meet current demand and expected future sales volume growth.
- Our purchase commitments with contract manufacturers and suppliers were \$309.1 million at the end of fiscal year 2017 and \$334.0 million at the end of fiscal year 2016.

Subsequent Events

For details, see Part II, Item 8, Note 18, “Subsequent Events” in our notes to the consolidated financial statements in this Annual Report on Form 10-K.

Fiscal Year

Our fiscal year ends on June 30. References to fiscal year 2017, for example, refer to the fiscal year ended June 30, 2017.

Critical Accounting Policies

General

Our discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amount of assets, liabilities, revenues and expenses. We evaluate our estimates on an on-going basis, including those related to allowances for doubtful accounts and sales returns, inventory valuation, useful lives of property, plant and equipment, product warranty accruals, stock-based compensation, impairment of investments and long-lived assets, and income taxes. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making the judgments we make about the carrying values of assets and liabilities that are not readily apparent from other sources. Because these estimates can vary depending on the situation, actual results may differ from the estimates.

A summary of significant accounting policies is included in Part II, Item 8, Note 1, “Organization and Summary of Significant Accounting Policies” in our notes to the consolidated financial statements in this Annual Report on Form 10-K. Management believes the following are the most critical accounting policies and reflect the significant estimates and assumptions used in the preparation of the consolidated financial statements.

Revenue Recognition

Product sales. We recognize revenue from sales of products upon meeting all of the following revenue recognition criteria, which is typically met upon shipment or delivery of our products to customers, unless customer acceptance is uncertain or significant obligations to the customer remain: (i) persuasive evidence of an arrangement exists through customer contracts and orders, (ii) the customer takes title and assumes the risks and rewards of ownership, (iii) the sales price charged is fixed or determinable as evidenced by customer contracts and orders and (iv) collectibility is reasonably assured.

We estimate reserves for future sales returns based on a review of our history of actual returns for each major product line. We also reduce revenue for customer and distributor programs and incentive offerings such as price protection and rebates as well as cooperative marketing arrangements where the fair value of the benefit identified from the costs cannot be reasonably estimated.

We may use distributors to sell products to end customers. Revenue from distributors may be recognized on sell-in or sell-through basis depending on the terms of the arrangement between the distributor and us.

Services sales. Our sale of services mainly consists of extended warranty and on-site services. These services are sold at the time of the sale of the underlying products. Revenue related to extended warranty commences upon the expiration of the standard warranty period and is recognized ratably over the contractual period. Revenue related to on-site services commences upon recognition of the product sale and is recognized ratably over the contractual period. These service contracts are typically one to five years in length. Service revenue has been less than 10% of net sales for all periods presented and is not separately disclosed.

Multiple-element arrangements. Certain of our arrangements contain multiple elements, consisting of both our products and services. Revenue allocated to each element is recognized when all the revenue recognition criteria are met for that element.

We allocate arrangement consideration at the inception of an arrangement to all deliverables, if they represent a separate unit of accounting, based on their relative estimated stand-alone selling prices. A deliverable qualifies as a separate unit of accounting when the delivered element has stand-alone value to the customer. The guidance establishes the following hierarchy to determine the relative estimated stand-alone selling price to be used for allocating arrangement consideration to deliverables: (i) vendor-specific objective evidence of fair value (“VSOE”), (ii) third-party evidence of selling price (“TPE”) if VSOE is not available, or (iii) the vendor's best estimated selling price (“BESP”) if neither VSOE nor TPE are available. We do not have VSOE for deliverables in our arrangements, and TPE is generally not available because our products are highly differentiated, and we are unable to obtain reliable information on the products and pricing practices of our competitors. BESP reflects our estimate of what the selling price of a deliverable would be if it were sold regularly on a stand-alone basis.

As such, BESP is generally used to allocate the total arrangement consideration at the arrangement inception. We determine BESP for a product by considering multiple factors including, but not limited to, geographies, customer types, internal costs, gross margin objectives and pricing practices.

Product Warranties

We offer product warranties ranging from 15 to 39 months against any defective products. We accrue for estimated returns of defective products at the time revenue is recognized based on historical warranty experience and recent trends. We monitor warranty obligations and may make revisions to our warranty reserve if actual costs of product repair and replacement are significantly higher or lower than estimated. Accruals for anticipated future warranty costs are charged to cost of sales and included in accrued liabilities and other long-term liabilities. We adjust the changes in estimates on an ongoing basis as a result of new product introductions or changes in unit volumes compared with our historical experience, or if the cost of servicing warranty claims is greater or lesser than expected, and we account for the changes in estimates prospectively.

Inventories

Inventories are stated at weighted average cost, subject to lower of cost or market. Inventories consist of purchased parts and raw materials (principally components), work in process (principally products being assembled) and finished goods. Market value represents net realizable value for finished goods and work in process and replacement value for purchased parts and raw materials. We evaluate inventory on a quarterly basis for lower of cost or market and excess and obsolescence and, as necessary, write down the valuation of units based upon usage and sales, anticipated sales price, product obsolescence and other factors. Once a reserve is established, it is maintained until the product to which it relates is sold or scrapped.

We receive various rebate incentives from certain suppliers based on our contractual arrangements, including volume-based rebates. The rebates are recognized as a reduction of cost of inventories and reduces the cost of sales in the period when the related inventory is sold.

Income Taxes

We account for income taxes under an asset and liability approach. Deferred income taxes reflect the impact of temporary differences between assets and liabilities recognized for financial reporting purposes and such amounts recognized for income tax reporting purposes, net of operating loss carry-forwards and other tax credits measured by applying enacted tax laws related to the financial statement periods. Valuation allowances are provided when necessary to reduce deferred tax assets to an amount that is more likely than not to be realized.

We recognize tax liabilities for uncertain income tax positions on the income tax return based on the two-step process. The first step is to determine whether it is more likely than not that each income tax position would be sustained upon audit. The second step is to estimate and measure the tax benefit as the amount that has a greater than 50% likelihood of being realized upon ultimate settlement with the tax authority. Estimating these amounts requires us to determine the probability of various possible outcomes. We evaluate these uncertain tax positions on a quarterly basis. This evaluation is based on the consideration of several factors, including changes in facts or circumstances, changes in applicable tax law, settlement of issues under audit and new exposures. If we later determine that our exposure is lower or that the liability is not sufficient to cover our revised expectations, we adjust the liability and effect a related charge in our tax provision during the period in which we make such determination.

Stock-Based Compensation

We measure and recognize compensation expense for all share-based awards made to employees, consultants and non-employee members of our Board of Directors including stock options and restricted stock units ("RSUs"). We are required to estimate the fair value of share-based awards on the date of grant. The value of awards that are ultimately expected to vest is recognized as an expense over the requisite service periods. The fair value of RSUs is based on the closing market price of our common stock on the date of grant. We estimated the fair value of stock options granted using a Black-Scholes option-pricing model and a single option award approach. This model requires us to make estimates and assumptions with respect to the expected term of the option and the expected volatility of the price of our common stock. The fair value is then amortized on a straight-line basis over the requisite service periods of the awards, which is generally the vesting period.

The expected term represents the period that our stock-based awards are expected to be outstanding and was determined based on a combination of our peer group and our historical experience. The expected volatility is based on a combination of our implied and historical volatility. In addition, forfeitures of share-based awards are estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. We use historical data to estimate pre-vesting option and restricted stock unit forfeitures and record stock-based compensation expense only for those awards that are expected to vest.

Variable Interest Entities

We determine at the inception of each arrangement whether an entity in which we hold an investment or in which we have other variable interests in is considered a variable interest entity ("VIE"). We consolidate VIEs when we are the primary beneficiary. The primary beneficiary of a VIE is the party that meets both of the following criteria: (1) has the power to make decisions that most significantly affect the economic performance of the VIE; and (2) has the obligation to absorb losses or the right to receive benefits that in either case could potentially be significant to the VIE. Periodically, we assess whether any changes in the interest or relationship with the entity affect the determination of whether the entity is still a VIE and, if so, whether we are the primary beneficiary. If we are not the primary beneficiary in a VIE, we account for the investment under the equity method or cost method in accordance with the applicable GAAP.

We have concluded that Ablecom Technology, Inc. ("Ablecom") and its affiliate, Compuware Technology, Inc. ("Compuware") are VIEs in accordance with applicable accounting standards and guidance; however, we are not the primary beneficiary as we do not have the power to direct the activities that are most significant to the entities and therefore, we do not consolidate these entities. In performing this analysis, our management considered our explicit arrangements with Ablecom and Compuware, including the supplier arrangements. Also, as a result of the substantial related party relationships between us and these two companies, management considered whether any implicit arrangements exist that would cause us to protect those related parties' interests from suffering losses. Management determined that no implicit arrangements exist with Ablecom, Compuware, or their shareholders.

We and Ablecom jointly established Super Micro Asia Science and Technology Park, Inc. (the “Management Company”) in Taiwan to manage the common areas shared by us and Ablecom for our separately constructed manufacturing facilities. In fiscal year 2012, each company contributed \$0.2 million and owns 50% of the Management Company. We have concluded that the Management Company is a VIE, and although the operations of the Management Company are independent, through governance rights we have the power to direct the activities that are most significant to the Management Company. Therefore, we concluded that we are the primary beneficiary of the Management Company. For the fiscal years ended 2017, 2016 and 2015, the accounts of the Management Company have been consolidated with our accounts, and a noncontrolling interest has been recorded for Ablecom’s interests in the net assets and operations of the Management Company. In fiscal years 2017, 2016 and 2015, \$(14,000), \$20,000 and \$(11,000) of net income (loss) attributable to Ablecom’s interest was included in our general and administrative expenses in the consolidated statements of operations, respectively.

Results of Operations

Net Sales

Net sales consist of sales of our server solutions, including server systems and related services, subsystems, accessories. The main factors that impact our net sales are the number of compute nodes sold, the average selling prices per node for our server system sales and units shipped and the average selling price per unit for our subsystem and accessories. The prices for our server systems range widely depending upon the configuration, including the number of compute nodes, and the prices for our subsystems and accessories vary based on the type. A compute node is a hardware configuration having its own CPU, RAM and storage and that is capable of running its own instance of a non-virtualized operating system. Measuring volume using compute nodes enables more consistent measurement across different server form factors and across different vendors. As with most electronics-based products, average selling prices typically are highest at the time of introduction of new products that utilize the latest technology and tend to decrease over time as such products mature in the market and are replaced by next generation products.

The following table presents net sales by product type for fiscal years 2017, 2016 and 2015 (dollars in millions):

	Fiscal Years Ended June 30,			2017 over 2016 Change		2016 over 2015 Change	
	2017	2016	2015	\$	%	\$	%
Server systems	\$ 1,740.6	\$ 1,533.4	\$ 1,186.3	\$ 207.2	13.5%	\$ 347.1	29.3 %
<i>Percentage of total net sales</i>	70.0%	68.9%	60.7%				
Subsystems and accessories	744.3	691.6	768.1	52.7	7.6%	(76.5)	(10.0)%
<i>Percentage of total net sales</i>	30.0%	31.1%	39.3%				
Total net sales	\$ 2,484.9	\$ 2,225.0	\$ 1,954.4	\$ 259.9	11.7%	\$ 270.6	13.8 %

Fiscal Year 2017 compared with Fiscal Year 2016

The year-over-year increase of \$259.9 million in our net sales in fiscal year 2017 compared with fiscal year 2016 was primarily due to an increase in sales of our server systems.

The year-over-year increase in server system sales was primarily due to an increase of average selling price per node from \$2,902 in fiscal year 2016 to \$3,118 in fiscal year 2017. The increase in average selling prices of our server systems was primarily due to higher sales of our complete server systems that offer higher density computing and more memory and hard drive capacity. The year-over-year increase in net sales of our subsystems and accessories in fiscal year 2017 was primarily due to higher sales of server accessories to our distributors.

Fiscal Year 2016 compared with Fiscal Year 2015

The year-over-year increase of \$270.6 million in our net sales in fiscal year 2016 compared with fiscal year 2015 was due to an increase in sales of our server systems partially offset by reduced sales of subsystems.

The year-over-year increase in server system sales was primarily due to an approximately 15% increase in server system shipping volume and an increase of average selling price per node from \$2,661 in fiscal year 2015 to \$2,902 in fiscal year 2016. The increase in average selling prices of our server systems was primarily due to higher sales of our complete server

systems that offer higher density computing and more memory and hard drive capacity. The year-over-year decrease in net sales of our subsystems and accessories in fiscal year 2016 was primarily due lower sales of hard drives and memory bundled with our server solutions to our distributors and system integrators as we continued to promote our sales of complete server systems to our OEM and direct customers.

The following table presents the percentages of net sales from products sold to distributors and OEMs and direct customers for fiscal years 2017, 2016 and 2015:

	Years Ended June 30,			2017 over 2016	2016 over 2015
	2017	2016	2015	%	%
Distributors	47.8%	45.8%	49.6%	2 %	(3.8)%
OEMs and direct customers	52.2%	54.2%	50.4%	(2)%	3.8 %
Total net sales	100.0%	100.0%	100.0%		

Fiscal Year 2017 compared with Fiscal Year 2016

The year-over-year increase in net sales to distributors in fiscal year 2017 as a percentage of total net sales as compared with fiscal year 2016 was primarily due to the higher sales to our system integrator customers. The year-over-year decrease in net sales to direct and OEM customers in fiscal year 2017 as a percentage of total net sales as compared with fiscal year 2016 was primarily due to lower demand for our complete server systems from cloud computing and internet data center customers.

Fiscal Year 2016 compared with Fiscal Year 2015

The year-over-year decrease in net sales to distributors in fiscal year 2016 as a percentage of total net sales as compared with fiscal year 2015 was primarily due to the lower sales of our subsystem and accessories, which are typically sold through distributors. The year-over-year increase in net sales to direct and OEM customers in fiscal year 2016 as a percentage of total net sales as compared with fiscal year 2015 was primarily due to the higher sales of our complete server systems to our cloud computing and internet data center customers.

The following table presents percentages of net sales by geographic region for fiscal years 2017, 2016 and 2015:

	Years Ended June 30,			2017 over 2016	2016 over 2015
	2017	2016	2015	%	%
United States	57.2%	63.3%	58.8%	(6.1)%	4.5 %
Asia	20.2%	14.4%	16.0%	5.8 %	(1.6)%
Europe	18.3%	17.4%	18.8%	0.9 %	(1.4)%
Others	4.3%	4.9%	6.4%	(0.6)%	(1.5)%
Total net sales	100.0%	100.0%	100.0%		

Fiscal Year 2017 compared with Fiscal Year 2016

The year-over-year decrease in net sales in the United States in fiscal year 2017 was primarily due to the lower sales of our server systems to our cloud computing and internet data center customers. As a result, our United States sales as a percentage of total net sales decreased in fiscal year 2017 compared with fiscal year 2016. The year-over-year increase in net sales in Asia and Europe in fiscal 2017 as a percentage of total net sales as compared with fiscal year 2016 was due primarily to increased sales to our channel partners in China, Taiwan, Japan and the United Kingdom.

Fiscal Year 2016 compared with Fiscal Year 2015

The year-over-year increase in net sales in the United States in fiscal year 2016 as a percentage of total net sales as compared with fiscal year 2015 was primarily due to the higher sales of our server systems to our cloud computing and internet data center customers, which sales represent a higher portion of sales in the United States than in other regions. The year-over-year decrease in net sales in Asia and Europe in fiscal year 2016 as a percentage of total net sales as compared with fiscal year

2015 was primarily due to lower sales growth of our server systems in China and the United Kingdom as compared to other regions.

Cost of Sales and Gross Margin

Cost of sales primarily consists of the costs to manufacture our products, including the costs of materials, contract manufacturing, shipping, personnel and related expenses including stock-based compensation, equipment and facility expenses, warranty costs and inventory excess and obsolescence provisions. The primary factors that impact our cost of sales are the mix of products sold and cost of materials, which include raw material costs, shipping costs and salary and benefits related to production. Cost of sales as a percentage of net sales may increase over time if decreases in average selling prices are not offset by corresponding decreases in our costs. Our cost of sales as a percentage of net sales is also impacted by the extent to which we are able to efficiently utilize our expanding manufacturing capacity. Because we generally do not have long-term fixed supply agreements, our cost of sales is subject to change in the cost of materials based on market conditions. As a result, our cost of sales as a percentage of sales in any period can be negatively impacted by significant component price increases resulting from component shortages.

We use several suppliers and contract manufacturers to design and manufacture components in accordance with our specifications, with most final assembly and testing performed at our manufacturing facility in San Jose, California. During fiscal year 2017, we continued to increase manufacturing and service operations in Taiwan and the Netherlands primarily to support our Asian and European customers and have continued to work on improving our utilization of our overseas manufacturing capacity. We work with Ablecom, one of our key contract manufacturers and also a related party to optimize modular designs for our chassis and certain of other components. We also outsource to Compuware, also a related party, a portion of our design activities and a significant part of our manufacturing of components, particularly power supplies. Our purchases of products from Ablecom and Compuware represented 11.1%, 12.8% and 13.8% of our cost of sales for fiscal years 2017, 2016 and 2015, respectively. For further details on our dealings with related parties, see Part II, Item 8, Note 11, "Related Party Transactions."

Cost of sales and gross margin for fiscal years 2017, 2016 and 2015, are as follows (dollars in millions):

	Years Ended June 30,			2017 over 2016 Change		2016 over 2015 Change	
	2017	2016	2015	\$	%	\$	%
Cost of sales	\$ 2,135.0	\$ 1,894.5	\$ 1,647.8	\$ 240.5	12.7 %	\$ 246.7	15.0 %
Gross profit	350.0	330.5	306.6	19.5	5.9 %	23.9	7.8 %
Gross margin	14.1%	14.9%	15.7%		(0.8)%		(0.8)%

Fiscal Year 2017 compared with Fiscal Year 2016

The year-over-year increase of \$240.5 million in cost of sales in fiscal year 2017 compared with fiscal year 2016 was primarily attributable to an increase of \$225.1 million in product cost as related to the increase in net sales and shortages of memory and SSD components, an increase of \$6.3 million in inventory provision primarily due to an increase in aged inventory and an increase in reserves for specific product issues, an increase of \$4.4 million in warranty provision due to higher cost of servicing warranty claims from increased net sales in fiscal year 2017, and an increase of \$4.2 million in compensation and benefits including stock-based compensation as a result of an increase in annual salaries and an increase of 81 operations personnel to support the growth of our business.

The year-over-year decrease in the gross margin percentage in fiscal year 2017 compared with fiscal year 2016 was primarily due to higher costs related to shortages of memory and SSD components, as well as a higher percentage of sales of our server systems being comprised of mature, late life cycle processors that generally are lower margin sales. In addition, in fiscal year 2017 as compared with fiscal year 2016, we had higher sales in Asia where pricing is typically more competitive, which had a negative impact on our gross margin percentage.

Fiscal Year 2016 compared with Fiscal Year 2015

The year-over-year increase of \$246.7 million in cost of sales in fiscal year 2016 compared with fiscal year 2015 was primarily attributable to an increase of \$222.2 million in product cost as related to the increase in net sales, an increase of \$9.1 million in compensation and benefits including stock-based compensation as a result of an increase in annual salaries and an

increase of 137 operations personnel to support the growth of our business, an increase of \$4.7 million in facility expense, an increase of \$3.5 million in inventory provision due to more reserves for specific products, an increase of \$1.7 million in warranty provision due to higher cost of servicing warranty claims from increased net sales in fiscal year 2016 and an increase of \$1.6 million of depreciation expenses.

The year-over-year decrease in the gross margin percentage in fiscal year 2016 compared with fiscal year 2015 was primarily due to significantly lower gross margins from sales of our subsystem and accessories and lower utilization of manufacturing capacity partially offset by higher sales of our complete server systems such as storage servers which have a higher gross margin.

Operating Expenses

Research and development expenses consist of the personnel and related expenses including stock-based compensation of our research and development teams, and materials and supplies, consulting services, third-party testing services and equipment and facility expenses related to our research and development activities. All research and development costs are expensed as incurred. We occasionally receive non-recurring engineering (“NRE”) funding from certain suppliers and customers for joint development. Under these programs, we are reimbursed for certain research and development costs that we incur as part of the joint development of our products and those of our suppliers and customers. These amounts offset a portion of the related research and development expenses and have the effect of reducing our reported research and development expenses.

Sales and marketing expenses consist primarily of salaries, stock-based compensation and incentive bonuses for our sales and marketing personnel, costs for tradeshows, independent sales representative fees and marketing programs. From time to time, we receive cooperative marketing funding from certain suppliers. Under these programs, we are reimbursed for certain marketing costs that we incur as part of the joint promotion of our products and those of our suppliers. These amounts offset a portion of the related expenses and have the effect of reducing our reported sales and marketing expenses. The timing, magnitude and estimated usage of these programs can result in significant variations in reported sales and marketing expenses from period to period. Spending on cooperative marketing, reimbursed by our suppliers, typically increases in connection with significant product releases by our suppliers.

General and administrative expenses consist primarily of general corporate costs, including personnel expenses, financial reporting, information technology, corporate governance and compliance and outside legal, audit and tax fees.

Operating expenses for fiscal years 2017, 2016 and 2015 are as follows (dollars in millions):

	Years Ended June 30,			2017 over 2016 Change		2016 over 2015 Change	
	2017	2016	2015	\$	%	\$	%
Research and development	\$ 144.0	\$ 124.2	\$ 101.4	\$ 19.8	15.9%	\$ 22.8	22.5%
<i>Percentage of total net sales</i>	5.8%	5.6%	5.2%				
Sales and marketing	\$ 66.4	\$ 58.3	\$ 47.5	\$ 8.1	13.9%	\$ 10.8	22.7%
<i>Percentage of total net sales</i>	2.7%	2.6%	2.4%				
General and administrative	\$ 44.7	\$ 40.5	\$ 25.0	\$ 4.2	10.4%	\$ 15.5	62.0%
<i>Percentage of total net sales</i>	1.8%	1.8%	1.3%				
Total operating expenses	\$ 255.1	\$ 223.0	\$ 173.9	\$ 32.1	14.4%	\$ 49.1	28.2%
<i>Percentage of total net sales</i>	10.3%	10.0%	8.9%				

Fiscal Year 2017 compared with Fiscal Year 2016

Research and development expenses increased by \$19.8 million, or 15.9% in fiscal year 2017 as compared with fiscal year 2016 primarily due to an increase of \$21.0 million in compensation and benefits expense, including stock-based compensation expense and an increase of \$1.4 million in product development expenses for prototype materials. The increase was partially offset by an increase of \$3.4 million reimbursement received for certain research and development costs that we incur as part of the joint development of our and our suppliers’ and customers’ products. Our compensation and benefit expense increased primarily as a result of an increase in annual salaries and an increase of 168 research and development personnel to support our expanded product development initiatives in the United States and in Taiwan and to support the growth of our business.

Sales and marketing expenses increased by \$8.1 million, or 13.9%, in fiscal year 2017 as compared with fiscal year 2016 primarily due to an increase of \$4.8 million in compensation and benefits, including stock-based compensation, as a result of an increase in annual salaries and an increase of 47 sales and marketing personnel, and an increase of \$1.5 million in advertising and promotion expenses.

General and administrative expenses increased by \$4.2 million, or 10.4% in fiscal year 2017 as compared with fiscal year 2016. The increase was primarily due to an increase of \$7.1 million in compensation and benefits including stock-based compensation expense, partially offset by a \$2.4 million decrease in legal and professional fees. Our compensation and benefit expense in general and administrative expenses increased primarily as a result of an increase in annual salaries and an increase of 45 personnel to support our expanded business.

Fiscal Year 2016 compared with Fiscal Year 2015

Research and development expenses increased by \$22.8 million, or 22.5% in fiscal year 2016 compared with fiscal year 2015 primarily due to an increase of \$18.1 million in compensation and benefits, including stock-based compensation expense and an increase of \$3.3 million in development expenses for prototype materials. Our compensation and benefit expense increased primarily as a result of an increase in annual salaries and an increase of 146 research and development personnel to support our expanded product development initiatives in the United States and in Taiwan and to support the growth of our business in many market verticals.

Sales and marketing expenses increased by \$10.8 million, or 22.7%, in fiscal year 2016 as compared with fiscal year 2015 primarily due to an increase of \$7.4 million in compensation and benefits, including stock-based compensation as a result of an increase in annual salaries and an increase of 42 sales and marketing personnel, and an increase of \$2.5 million in advertising and promotion expenses.

General and administrative expenses increased by \$15.5 million, or 62.0% in fiscal year 2016 as compared with fiscal year 2015. The increase was primarily due to an increase of \$9.8 million in compensation and benefits including stock-based compensation expense, an increase of \$4.8 million increase in legal, audit and accounting fees primarily due to costs incurred in connection with an out of period correction of errors in the first quarter of fiscal year 2016 and remediation of internal control deficiencies and an increase of \$1.1 million in bad debt expenses. Our compensation and benefit expense in general and administrative expenses increased primarily as a result of an increase in annual salaries and an increase of 83 personnel to support our expanded business.

Interest and Other Income (Expense), Net

Other income (expense), net consists primarily of interest earned on our investment and cash balances, share of loss from equity investee and foreign exchange gains and losses.

Interest expense represents interest expense on our term loans and lines of credit.

Interest and other income (expense), net for fiscal years 2017, 2016 and 2015 are as follows (dollars in millions):

	Years Ended June 30,			2017 over 2016 Change		2016 over 2015 Change	
	2017	2016	2015	\$	%	\$	%
Other income (expense), net	\$ (1.3)	\$ 1.5	\$ 1.0	\$ (2.8)	(186.7)%	\$ 0.5	50.0%
Interest expense	(2.3)	(1.6)	(1.0)	(0.7)	43.8 %	(0.6)	60.0%
Interest and other income (expense), net	<u>\$ (3.6)</u>	<u>\$ (0.1)</u>	<u>\$ —</u>	<u>\$ (3.5)</u>	*	<u>\$ (0.1)</u>	*

* Not meaningful

Interest and other income (expense), net. Interest and other income (expense), net increased by \$3.5 million in fiscal year 2017 compared with fiscal year 2016. The increase was primarily due to an unrealized foreign currency loss related the remeasurement of our NTDS\$700.0 million term loan denominated in NTD. Interest and other expense, net remained consistent in fiscal year 2016 as compared with fiscal year 2015.

Provision for Income Taxes

Our income tax provision is based on our taxable income generated in the jurisdictions in which we operate, primarily the United States, Taiwan and the Netherlands. Our effective tax rate differs from the statutory rate primarily due to research and development tax credits and the domestic production activities deduction which were partially offset by state taxes and unrecognized tax benefits related to permanent establishment exposures. A reconciliation of the federal statutory income tax rate to our effective tax rate is set forth in Part II, Item 8, Note 13, "Income Taxes" to the consolidated financial statements in this Annual Report on Form 10-K.

Provision for income taxes and effective tax rates for fiscal years 2017, 2016 and 2015 are as follows (dollars in millions):

	Years Ended June 30,			2017 over 2016 Change		2016 over 2015 Change	
	2017	2016	2015	\$	%	\$	%
Income tax provision	\$ 24.4	\$ 35.3	\$ 40.1	\$ (10.9)	(30.9)%	\$ (4.8)	(12.0)%
<i>Percentage of total net sales</i>	1.0%	1.6%	2.1%				
Effective tax rate	26.8%	32.9%	30.2%				

Fiscal Year 2017 compared with Fiscal Year 2016

Provision for income taxes decreased by \$10.9 million, or 30.9% in fiscal year 2017 compared with fiscal year 2016. The lower income tax provision for fiscal year 2017 was primarily attributable to our lower income from operations as compared with fiscal year 2016. The effective tax rate for fiscal year 2017, was lower than in fiscal year 2016 and the statutory tax rate of 35%, primarily due to tax benefits resulting from the completion of U.S. federal income tax audit and an income tax audit in a foreign jurisdiction as well as research and development tax credit and domestic production activities deductions.

Fiscal Year 2016 compared with Fiscal Year 2015

Provision for income taxes decreased by \$4.8 million, or 12.0% in fiscal year 2016 compared with fiscal year 2015. The lower income tax provision for fiscal year 2016 was primarily attributable to our lower operating income as compared with fiscal year 2015. The effective tax rate for fiscal year 2016 was higher as compared with fiscal year 2015 primarily due to the lower foreign rate benefits and foreign unrecognized tax benefits offset in part by the increase in federal research and development credit as a result of the enactment of the Protecting Americans from Tax Hikes ("PATH") Act of 2015.

Liquidity and Capital Resources

Since our inception, we have financed our growth primarily with funds generated from operations and from the proceeds of our initial public offering. In addition, we have, from time to time, utilized borrowing facilities, particularly in relation to the financing of real property acquisitions. Our cash and cash equivalents were \$110.6 million and \$178.8 million as of June 30, 2017 and 2016, respectively. Our cash in foreign locations was \$50.8 million and \$46.5 million as of June 30, 2017 and 2016, respectively. It is management's intention to reinvest the undistributed foreign earnings indefinitely in foreign operations. We believe that our current cash and cash equivalents are adequate to meet our needs, including any debt balances due at maturity, for the next twelve months from the issuance of these consolidated financial statements.

Fiscal Year 2017

Operating Activities. Net cash used in operating activities was \$96.2 million in fiscal year 2017.

Net cash used in our operating activities for fiscal year 2017 was primarily due to an increase in inventories of \$235.6 million and an increase in accounts receivable of \$149.5 million, which were partially offset by an increase in accounts payable of \$135.3 million, our net income of \$66.9 million, an increase in accrued liabilities of \$27.6 million, stock-based compensation expense of \$19.7 million, an increase in other long term liabilities of \$17.9 million, provision for excess and obsolete inventories of \$15.7 million, and depreciation and amortization expense of \$16.4 million. The increase in accounts receivable was primarily due to higher sales volume in the fourth quarter of fiscal year 2017. The increase in inventories and accounts payable was primarily due to increased sales as well as increased market prices for inventories related to memory and SSD components. In addition, we staged inventory to support new product launches.

Investing activities. Net cash used in our investing activities was \$29.7 million in fiscal year 2017 due primarily to \$29.4 million associated with investments in property, plant and equipment, of which \$16.1 million was related to the construction of buildings at our Green Computing Park in San Jose, California.

Financing activities. Net cash provided by our financing activities was \$57.7 million for fiscal year 2017. In fiscal year 2017, we drew down \$207.0 million on our revolving credit facility with Bank of America and CTBC Bank and repaid \$140.5 million in loans. We received \$10.9 million in connection with the exercise of stock options in fiscal year 2017. Further, we used \$18.5 million in the repurchase of our outstanding common stock.

Fiscal Year 2016

Operating Activities. Net cash provided by operating activities was \$108.0 million for fiscal year 2016. Net cash provided by our operating activities for fiscal year 2016 was primarily due to our net income of \$72.1 million, a decrease in accounts receivable of \$53.6 million, an increase in other long term liabilities of \$20.0 million, stock-based compensation expense of \$16.9 million, depreciation and amortization expense of \$13.3 million, provision for excess and obsolete inventories of \$9.4 million and an increase in accrued liabilities of \$12.9 million, which were partially offset by a decrease in accounts payable of \$65.8 million and an increase in prepaid expenses and other current assets of \$23.5 million. The decrease for fiscal year 2016 as compared with fiscal year 2015 in accounts receivable was primarily due to lower sales volume in the fourth quarter of fiscal year 2016. The decrease for fiscal year 2016 as compared with fiscal year 2015 in inventories and accounts payable was primarily due to anticipated lower sales volume in the first quarter of fiscal year 2017.

Investing activities. Net cash used in our investing activities was \$35.1 million in fiscal year 2016, which was primarily due to \$34.1 million associated with investments in property, plant and equipment, of which \$16.7 million was related to the construction of buildings at our Green Computing Park in San Jose, California, and of which \$3.4 million was related to the implementation of a new ERP system for our United States headquarters and our subsidiaries.

Financing activities. Net cash provided by our financing activities was \$13.1 million for fiscal year 2016. In fiscal year 2016, we drew down \$34.2 million on our revolving lines of credit with Bank of America and CTBC Bank and repaid \$34.1 million in loans. Further, we received \$12.2 million in connection with the exercise of stock options in fiscal year 2016.

Fiscal Year 2015

Operating Activities. Net cash used in operating activities was \$46.1 million for fiscal year 2015. Net cash used in our operating activities for fiscal year 2015 was primarily due to an increase in inventories of \$177.6 million and an increase in accounts receivable of \$78.2 million, which were partially offset by our net income of \$92.6 million, an increase in accounts payable of \$81.7 million, stock-based compensation expense of \$14.4 million, an increase in net income taxes payable of \$9.0 million, an increase in accrued liabilities of \$13.9 million, depreciation and amortization expense of \$8.1 million, increase in other long-term liabilities of \$7.7 million and provision for excess and obsolete inventories of \$5.9 million. The increase in accounts receivable was primarily due to an increase in our sales late in the fourth quarter. The increase in inventories and accounts payable was primarily due to higher purchases to support the anticipated level of growth in our net sales in fiscal year 2016.

Investing activities. Net cash used in our investing activities was \$36.2 million in fiscal year 2015, which was primary due to a \$35.1 million investment in property, plant and equipment, of which \$21.8 million related to the development and construction of our first manufacturing building and warehouse at our Green Computing Park in San Jose, California, which was completed in August 2015, and of which \$4.8 million related to the implementation of a new ERP system.

Financing activities. Net cash provided by our financing activities was \$80.0 million for fiscal year 2015. In fiscal year 2015, we drew down \$84.9 million on our revolving line of credit from Bank of America and CTBC Bank and repaid \$36.0 million in loans. Further, we received \$23.3 million in connection with the exercise of stock options in fiscal year 2015.

We expect to experience continued growth in our working capital requirements and capital expenditures as we continue to expand our business. Our long-term future capital requirements will depend on many factors, including our level of revenues, the timing and extent of spending to support our product development efforts, the expansion of sales and marketing activities, the timing of our introductions of new products, the costs to ensure access to adequate manufacturing capacity and the continuing market acceptance of our products. We intend to fund this continued expansion through cash generated by operations and by drawing on our revolving credit facility or through other debt financing. However, we cannot be certain whether such financing will be available on commercially reasonable or otherwise favorable terms or that such financing will

be available at all. We anticipate that working capital and capital expenditures will constitute a material use of our cash resources.

Other factors affecting liquidity and capital resources

Activities under Revolving Lines of Credit and Term Loans

Bank of America

2015 Bank of America Credit Facility

In June 2015, we entered into an amendment to our then existing credit agreement with Bank of America N.A. ("Bank of America") which provided for (i) a \$65.0 million revolving line of credit facility that would have matured on November 15, 2015 and (ii) a five-year \$14.0 million term loan facility (collectively, the "2015 Bank of America Credit Facility"). The term loan was secured by three buildings located in San Jose, California and the principal and interest was payable monthly through September 30, 2016 with an interest rate at the LIBOR rate plus 1.50% per annum. In May 2016, we extended the revolving line of credit to mature on June 30, 2016.

2016 Bank of America Credit Facility

In June 2016, we entered into a new credit agreement with Bank of America, which provided for (i) a \$55.0 million revolving line of credit facility including a \$5.0 million letter of credit sublimit that was to mature on June 30, 2017 and (ii) a five-year \$50.0 million term loan facility (collectively, the "2016 Bank of America Credit Facility"). The 2016 Bank of America Credit Facility replaced the 2015 Bank of America Credit Facility. The 2016 Bank of America Credit Facility term loan is secured by seven buildings located in San Jose, California and the property, plant and equipment and the inventory in those buildings. The principal and interest of the 2016 Bank of America Credit Facility term loan are payable monthly through June 30, 2021 with an interest rate at the LIBOR rate plus 1.25% per annum. The interest rate for the 2016 Bank of America Credit Facility revolving line of credit is at the LIBOR rate plus 1.25% per annum. The LIBOR rate was 1.04% at June 30, 2017. The letter of credit bears interest at a rate of 1.25% per annum. In May 2017, we entered into an amendment to the 2016 Bank of America Credit Facility to increase the revolving line of credit to \$85.0 million and extended the maturity date of the revolving lines of credit to October 31, 2018. Prior to the maturity, in April 2018, we repaid and terminated the 2016 Bank of America Credit Facility with proceeds from a new revolving line of credit (the "2018 Bank of America Credit Facility").

In June 2016, we also entered into a separate credit agreement as a part of the 2016 Bank of America Credit Facility, which provided for a revolving line of credit of \$10.0 million for our Taiwan and Netherlands subsidiaries that was to mature on June 30, 2017. The interest rate of the revolving line of credit is equal to a minimum of 0.9% per annum plus the lender's cost of funds. In December 2016, we entered into an amendment to this separate credit agreement to increase the revolving line of credit from \$10.0 million to \$20.0 million. We extended the revolving line of credit to mature on October 31, 2018. Under the terms of this separate credit agreement, we cannot directly or indirectly pay any dividends, except in limited situations.

As of June 30, 2017 and 2016, the total outstanding borrowings under the 2016 Bank of America Credit Facility term loans was \$40.0 million and \$0.9 million, respectively. The total outstanding borrowings under the 2016 Bank of America Credit Facility revolving lines of credit was \$83.2 million and \$62.2 million as of June 30, 2017 and 2016, respectively. The interest rates for these loans ranged from 1.61% to 2.46% per annum as of June 30, 2017 and from 1.02% to 1.96% per annum as of June 30, 2016, respectively. As of June 30, 2017, the amount of the unused revolving lines of credit with Bank of America under the credit agreements was \$21.8 million. As of June 30, 2017, assets amounting to \$1,168.6 million collateralized the line of credit with Bank of America under the credit agreement, which represent our total assets of the United States headquarters, except for seven buildings located in San Jose, California and property, plant and equipment and inventory in those buildings. As of June 30, 2017, total assets collateralizing the term loan with Bank of America under the credit agreement were \$67.9 million.

2018 Bank of America Credit Facility

In April 2018, we entered into the 2018 Bank of America Credit Facility, which replaced the 2016 Bank of America Credit Facility. The 2018 Bank of America Credit Facility provides for a revolving credit line and other financial accommodations of up to \$250.0 million extended by certain lenders. The 2018 Bank of America Credit Facility expires after 364 days, or at our option, and if certain conditions are satisfied, including being current on all of our delinquent quarterly and annual filings with the SEC, may convert into a 5-year revolving credit facility. If and upon such conversion, the lenders for the

2018 Bank of America Credit Facility shall extend, in aggregate, a principal amount of up to \$400.0 million. Prior to the 2018 Bank of America Credit Facility's conversion to the 5-year revolving credit facility, interest shall be at the LIBOR rate plus 2.75% per annum. Upon the 2018 Bank of America Credit Facility converting to the 5-year revolving credit facility, interest shall accrue at the LIBOR rate plus an amount between 1.50% and 2.00% for loans to both Super Micro Computer and Super Micro Computer B.V. Interest accrued on any loans under the 2018 Bank of America Credit Facility is due on the first day of each month, and the loans are due and payable in full on the termination date of the 2018 Bank of America Credit Facility, unless payment is required earlier. Voluntary prepayments are permitted without early repayment fees or penalties. Subject to customary exceptions, the 2018 Bank of America Credit Facility is secured by substantially all of our assets. Upon conversion to the 5-year revolving credit facility both Super Micro Computer's assets, and at our option, Super Micro Computer B.V.'s assets will be used as collateral. Under the terms of the 2018 Bank of America Credit Facility, we cannot pay any dividends.

On January 31, 2019, we paid a fee and entered into an amendment of the 2018 Bank of America Credit Facility that resulted in the extension of the maturity date of the 2018 Bank of America Credit Facility from April 19, 2019 to June 30, 2019.

CTBC Bank

In April 2016, we entered into a credit agreement with CTBC Bank Co., Ltd ("CTBC Bank") that provides for (i) a 12-month NTD\$700.0 million or \$21.6 million U.S. dollar equivalent term loan facility secured by our land and building located in Bade, Taiwan with an interest rate equal to the lender's established NTD interest rate plus 0.25% per annum which was adjusted monthly, which term loan facility also included a 12-month line of guarantee up to NTD\$100.0 million or \$3.1 million U.S. dollar equivalent with an annual fee equal to 0.5% per annum, and (ii) a 12-month revolving line of credit up to 80.0% of eligible accounts receivable in an aggregate amount of up to \$40.0 million with an interest rate equal to the lender's established USD interest rate plus 0.30% per annum which was adjusted monthly (collectively, the "CTBC Credit Facility"). The total borrowings allowed under the CTBC Credit Facility was capped at \$40.0 million. We extended the CTBC Credit Facility to mature on May 31, 2017.

In May 2017, we renewed the credit agreement with respect to the CTBC Credit Facility, such that it provides for (i) a 12-month NTD\$700.0 million or \$23.0 million U.S. dollar equivalent term loan facility secured by our land and building located in Bade, Taiwan with an interest rate equal to the lender's established NTD interest rate plus 0.25% per annum which is adjusted monthly, which term loan facility also included a 12-month line of guarantee up to NTD\$100.0 million or \$3.3 million U.S. dollar equivalent with an annual fee equal to 0.5% per annum, and (ii) a 12-month revolving line of credit up to 80.0% of eligible accounts receivable in an aggregate amount of up to \$50.0 million with an interest rate equal to the lender's established USD interest rate plus an interest rate ranging from 0.40% to 0.45% per annum which is adjusted monthly. The total borrowings allowed under the CTBC Credit Facility were capped at \$50.0 million.

The total outstanding borrowings under the CTBC Credit Facility term loan were denominated in Taiwanese dollars and remeasured into U.S. dollars of \$19.7 million and \$20.4 million at June 30, 2017 and 2016, respectively. At June 30, 2017 and 2016, the total outstanding borrowings under the CTBC Credit Facility revolving line of credit was \$19.0 million and \$10.1 million, respectively, in U.S. dollars. The interest rate for these loans ranged from 0.93% and 2.00% at June 30, 2017 and 0.90% and 1.25% per annum at June 30, 2016. At June 30, 2017, the amount available for future borrowing under the CTBC Credit Facility was \$11.3 million. As of June 30, 2017, the net book value of land and building located in Bade, Taiwan collateralizing the CTBC Credit Facility term loan was \$26.4 million. Under the terms of the May 2017 renewed credit agreement, the CTBC Credit Facility was to mature on April 30, 2018 but prior to the maturity we entered into a new credit agreement with CTBC Bank in January 2018.

In January 2018, we entered into a credit agreement with CTBC Bank that provides for (i) a 12-month NTD\$700.0 million or \$23.6 million U.S. dollar equivalent term loan facility secured by the land and building located in Bade, Taiwan with an interest rate equal to the lender's established NTD interest rate plus 0.25% per annum which is adjusted monthly, which term loan facility also includes a 12-month line of guarantee up to NTD\$100.0 million or \$3.4 million U.S. dollar equivalent with an annual fee equal to 0.5% per annum, and (ii) a 12-month NTD\$1,500.0 million or \$50.5 million U.S. dollar equivalent term loan facility with an interest rate equal to the lender's established NTD interest rate plus 0.25% per annum which is adjusted monthly, (collectively, the "2018 CTBC Credit Facility"). The 2018 CTBC Credit Facility replaced the CTBC Credit Facility. The total borrowings allowed under the 2018 CTBC Credit Facility was initially capped at \$50.0 million and in August 2018, was reduced to \$40.0 million. In April 2019, we extended the maturity of 2018 CTBC Credit Facility to June 30, 2019.

Covenant Compliance

2018 Bank of America Credit Facility

The credit agreement with Bank of America related to the 2018 Bank of America Credit Facility contains customary representations and warranties and customary affirmative and negative covenants applicable to us. The credit agreement contains a financial covenant, which requires that we maintain a Fixed Charge Coverage Ratio, as defined in the agreement of at least 1.00 for each twelve-month period while a Trigger Period, as defined in the agreement, is in effect. We have maintained compliance with this covenant.

On September 7, 2018, Bank of America issued an extension letter to us in connection with the 2018 Bank of America Credit Facility, which extended the delivery date of our audited consolidated financial statements, compliance certificates and other material reports for the fiscal year ended June 30, 2018 to January 31, 2019. On January 31, 2019, we entered into an amendment of the loan and security agreement with respect to the 2018 Bank of America Credit Facility to, among other matters, (a) extend the delivery date of our audited consolidated financial statements, compliance certificates and other material reports for the fiscal year ended June 30, 2018 to June 30, 2019, and (b) require the delivery, by no later than March 31, 2019, of our audited consolidated financial statements for the fiscal year ended June 30, 2017. In April 2019, we paid a fee to extend the delivery of our audited consolidated financial statements for the fiscal year ended June 30, 2017 to June 30, 2019. We intend to negotiate the further extension for delivery of our audited consolidated financial statements, compliance certificates and other material reports for the fiscal year ended June 30, 2018.

CTBC Bank

There are no financial covenants associated with the CTBC Credit Facility or the 2018 CTBC Credit Facility.

Share Repurchase Program

In July 2016, our Board of Directors adopted a program to repurchase from time to time at management’s discretion up to \$100.0 million of our common stock in the open market or in private transactions during the next twelve months at prevailing market prices. In fiscal year 2017, we purchased 888,097 shares of our common stock in the open market at a weighted average price of \$20.79 per share for approximately \$18.5 million. Repurchases were made under the program using our cash resources. The repurchase program ended in July 2017.

Contractual Obligations

The following table describes our contractual obligations as of June 30, 2017:

	Payments Due by Period				
	Less Than 1 Year	1 to 3 Years	3 to 5 Years	More Than 5 Years	Total
	(in thousands)				
Operating leases	\$ 4,844	\$ 8,505	\$ 3,605	\$ 3,951	\$ 20,905
Capital leases, including interest	309	433	140	—	882
Debt, including interest (1)	163,823	—	—	—	163,823
Purchase commitments (2)	309,120	—	—	—	309,120
Total (3)	\$ 478,096	\$ 8,938	\$ 3,745	\$ 3,951	\$ 494,730

- (1) Amount reflects total anticipated cash payments, including anticipated interest payments based on the interest rate at June 30, 2017. In 2018, we amended our existing credit agreement with CTBC Bank, which changed our maximum borrowing capacity to \$40.0 million and in January 2019 extended the maturity to June 30, 2019. In April 2018, we repaid and terminated the 2016 Bank of America Credit Facility with proceeds from the 2018 Bank of America Credit Facility. The 2018 Bank of America Credit Facility increases our borrowing capacity from \$155.0 million to \$250.0 million with Bank of America. In January 2019, we extended the maturity of the 2018 Bank of America Credit Facility from April 19, 2019 to June 30, 2019.
- (2) Amount reflects total gross purchase commitments under our manufacturing arrangements with third-party contract manufacturers or vendors. See Part II, Item 8, Note 14, “Commitments and Contingencies” to the consolidated financial statements in this Annual Report on Form 10-K for a discussion of purchase commitments.
- (3) The table above excludes liabilities for deferred revenue of \$80.5 million, \$6.3 million of deferred gain related to our remaining performance obligations in association with the contribution of certain technology rights to a privately-held company located in China, and unrecognized tax benefits and related interest and penalties accrual of \$13.3 million.

Deferred revenue represents billed services in advance which include extended warranty, on-site technical support, and hardware and software maintenance. We have not provided a detailed estimate of the payment timing of unrecognized tax benefits due to the uncertainty of when the related tax settlements will become due. See Part II, Item 8, Note 13, "Income Taxes" to the consolidated financial statements in this Annual Report on Form 10-K for a discussion of income taxes.

We expect to fund our remaining contractual obligations from our ongoing operations and existing cash and cash equivalents on hand.

Recent Accounting Pronouncements

For a description of recent accounting pronouncements, including the expected dates of adoption and estimated effects, if any, on our consolidated financial statements, see Part II, Item 8, Note 1, "Organization and Summary of Significant Accounting Policies" to the consolidated financial statements in this Annual Report on Form 10-K.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements.

Item 7A. Quantitative and Qualitative Disclosure About Market Risk

Interest Rate Risk

The primary objectives of our investment activities are to preserve principal, provide liquidity and maximize income without significantly increasing the risk. Some of the securities we invest in are subject to market risk. This means that a change in prevailing interest rates may cause the fair value of the investment to fluctuate. To minimize this risk, we maintain our portfolio of cash equivalents and short-term investments in money market funds and certificates of deposit. Our long-term investments include auction rate securities, which have been classified as long-term due to the lack of a liquid market for these securities. Since our results of operations are not dependent on investments, the risk associated with fluctuating interest rates is limited to our investment portfolio, and we believe that a 10% change in interest rates would not have a significant impact on our results of operations. As of June 30, 2017, our investments were in money market funds, certificates of deposits and auction rate securities.

We are exposed to changes in interest rates as a result of our borrowings under our term loan and revolving lines of credit. The interest rates for the term loans and the revolving lines of credit ranged from 0.93% to 2.46% at June 30, 2017 and 0.90% to 1.96% at June 30, 2016. Based on the outstanding principal indebtedness of \$161.4 million under our credit facilities as of June 30, 2017, we believe that a 10% change in interest rates would not have a significant impact on our results of operations.

Foreign Currency Risk

To date, our international customer and supplier agreements have been denominated primarily in U.S. dollars and accordingly, we have limited exposure to foreign currency exchange rate fluctuations from customer agreements, and do not currently engage in foreign currency hedging transactions. The functional currency of our subsidiaries in the Netherlands and Taiwan is the U.S. dollar. However, certain transactions in these entities are denominated in a currency other than the U.S. dollar, and thus we are subject to foreign currency exchange rate fluctuations associated with re-measurement to U.S. dollars. Such fluctuations have not been significant historically. Foreign exchange gain (loss) for fiscal years 2017, 2016 and 2015 was \$(1.3) million, \$1.3 million and \$0.8 million, respectively.

Item 8. Financial Statements and Supplementary Data

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS*

	<u>Page</u>
Report of Independent Registered Public Accounting Firm	52
Consolidated Balance Sheets	53
Consolidated Statements of Operations	54
Consolidated Statements of Comprehensive Income	55
Consolidated Statements of Stockholders' Equity	56
Consolidated Statements of Cash Flows	57
Notes to Consolidated Financial Statements	58

*The consolidated financial statements for the fiscal years ended June 30, 2016 and 2015 have been restated as further discussed in Note 19, "Restatement of Previously Issued Consolidated Financial Statements."

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
Super Micro Computer, Inc.
San Jose, California

We have audited the accompanying consolidated balance sheets of Super Micro Computer, Inc. and subsidiaries (the “Company”) as of June 30, 2017 and 2016, and the related consolidated statements of operations, comprehensive income, stockholders’ equity, and cash flows for each of the three years in the period ended June 30, 2017. These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of Super Micro Computer, Inc. and subsidiaries as of June 30, 2017 and 2016, and the results of their operations and their cash flows for each of the three years in the period ended June 30, 2017, in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note 19 to the consolidated financial statements, the accompanying 2016 and 2015 consolidated financial statements have been restated to correct misstatements.

As discussed in Note 11 to the consolidated financial statements, the Company has significant purchases from and sales to two related parties.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company’s internal control over financial reporting as of June 30, 2017, based on the criteria established in *Internal Control -Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated May 16, 2019 expressed an adverse opinion on the Company’s internal control over financial reporting because of material weaknesses.

/s/ Deloitte & Touche LLP
San Jose, California
May 16, 2019

SUPER MICRO COMPUTER, INC.
CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share amounts)

	June 30, 2017	June 30, 2016 (As Restated- see Note 19)
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 110,606	\$ 178,820
Accounts receivable, net of allowances of \$2,699 and \$2,413 at June 30, 2017 and 2016, respectively (including amounts receivable from related parties of \$6,877 and \$49 at June 30, 2017 and 2016, respectively)	324,004	174,933
Inventories	736,668	516,807
Prepaid income taxes	675	4,341
Prepaid expenses and other current assets (including receivables from related parties of \$13,327 and \$9,622 at June 30, 2017 and 2016, respectively)	89,213	79,427
Total current assets	1,261,166	954,328
Investment in equity investee	6,067	—
Long-term investments	2,625	2,643
Property, plant and equipment, net	195,576	187,949
Deferred income taxes, net	39,119	33,678
Other assets	10,577	12,885
Total assets	<u>\$ 1,515,130</u>	<u>\$ 1,191,483</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable (including amounts due to related parties of \$55,928 and \$44,941 at June 30, 2017 and 2016, respectively)	\$ 396,895	\$ 267,391
Accrued liabilities (including amounts due to related parties of \$8,450 and \$5,354 at June 30, 2017 and 2016, respectively)	112,824	83,596
Income taxes payable	1,364	5,054
Short-term debt and current portion of long-term debt, net of debt issuance costs	161,447	53,589
Total current liabilities	672,530	409,630
Long-term debt	—	40,000
Other long-term liabilities (including related party balance of \$4,900 and \$0 at June 30, 2017 and 2016, respectively)	68,754	45,200
Total liabilities	741,284	494,830
Commitments and contingencies (Note 14)		
Stockholders' equity:		
Common stock and additional paid-in capital, \$0.001 par value		
Authorized shares: 100,000,000		
Issued shares: 50,273,527 and 48,999,717 at June 30, 2017 and 2016, respectively	308,271	279,465
Treasury stock (at cost), 1,333,125 and 445,028 shares at June 30, 2017 and 2016, respectively	(20,491)	(2,030)
Accumulated other comprehensive loss	(77)	(85)
Retained earnings	485,973	419,119
Total Super Micro Computer, Inc. stockholders' equity	773,676	696,469
Noncontrolling interest	170	184
Total stockholders' equity	773,846	696,653
Total liabilities and stockholders' equity	<u>\$ 1,515,130</u>	<u>\$ 1,191,483</u>

See accompanying notes to consolidated financial statements.

SUPER MICRO COMPUTER, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per share amounts)

	Years Ended June 30,		
	2017	2016 (As Restated- see Note 19)	2015 (As Restated- see Note 19)
Net sales (including related party sales of \$33,821, \$29,110 and \$47,684 in fiscal years 2017, 2016 and 2015, respectively)	\$ 2,484,929	\$ 2,225,022	\$ 1,954,353
Cost of sales (including related party purchases of \$236,062, \$242,638 and \$227,661 in fiscal years 2017, 2016 and 2015, respectively)	2,134,971	1,894,521	1,647,769
Gross profit	349,958	330,501	306,584
Operating expenses:			
Research and development	143,992	124,223	101,402
Sales and marketing	66,445	58,338	47,496
General and administrative	44,646	40,449	25,040
Total operating expenses	255,083	223,010	173,938
Income from operations	94,875	107,491	132,646
Other income (expense), net	(1,287)	1,507	956
Interest expense	(2,300)	(1,594)	(965)
Income before income tax provision	91,288	107,404	132,637
Income tax provision	24,434	35,323	40,082
Net income	\$ 66,854	\$ 72,081	\$ 92,555
Net income per common share:			
Basic	\$ 1.38	\$ 1.50	\$ 1.99
Diluted	\$ 1.29	\$ 1.39	\$ 1.85
Weighted-average shares used in calculation of net income per common share:			
Basic	48,383	47,917	46,434
Diluted	51,679	51,836	50,094

See accompanying notes to consolidated financial statements.

SUPER MICRO COMPUTER, INC.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(in thousands)

	Years Ended June 30,		
	2017	2016 (As Restated- see Note 19)	2015 (As Restated- see Note 19)
Net income	\$ 66,854	\$ 72,081	\$ 92,555
Other comprehensive income (loss), net of tax:			
Foreign currency translation gains (losses)	19	(10)	(9)
Unrealized gains (losses) on investments	(11)	5	(8)
Total other comprehensive income (loss)	8	(5)	(17)
Total comprehensive income	<u>\$ 66,862</u>	<u>\$ 72,076</u>	<u>\$ 92,538</u>

See accompanying notes to consolidated financial statements.

SUPER MICRO COMPUTER, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(in thousands, except share amounts)

	Common Stock and Additional Paid-In Capital		Treasury Stock		Accumulated Other Comprehensive Loss	Retained Earnings	Non-controlling Interest	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
Balance at June 30, 2014 (As previously reported)	45,739,936	\$ 199,062	(445,028)	\$ (2,030)	\$ (63)	\$ 272,087	\$ 175	\$ 469,231
Cumulative restatement adjustments	—	531	—	—	—	(17,604)	—	(17,073)
Balance at June 30, 2014 (As Restated- see Note 19)	45,739,936	199,593	(445,028)	(2,030)	(63)	254,483	175	452,158
Exercise of stock options, net of taxes	2,124,401	23,338	—	—	—	—	—	23,338
Release of common stock shares upon vesting of restricted stock units	14,685	—	—	—	—	—	—	—
Shares withheld for the withholding on vesting of restricted stock units	(5,278)	(175)	—	—	—	—	—	(175)
Stock-based compensation (As Restated- see Note 19)	—	14,436	—	—	—	—	—	14,436
Tax benefit resulting from stock option and restricted stock unit transactions (As Restated- see Note 19)	—	11,301	—	—	—	—	—	11,301
Unrealized loss on investments	—	—	—	—	(8)	—	—	(8)
Foreign currency translation loss	—	—	—	—	(9)	—	—	(9)
Net income (loss) (As Restated- see Note 19)	—	—	—	—	—	92,555	(11)	92,544
Balance at June 30, 2015 (As Restated- see Note 19)	47,873,744	248,493	(445,028)	(2,030)	(80)	347,038	164	593,585
Exercise of stock options, net of taxes	1,013,430	12,186	—	—	—	—	—	12,186
Release of common stock shares upon vesting of restricted stock units	177,707	—	—	—	—	—	—	—
Shares withheld for the withholding on vesting of restricted stock units	(65,164)	(1,786)	—	—	—	—	—	(1,786)
Stock-based compensation (As Restated- see Note 19)	—	16,930	—	—	—	—	—	16,930
Tax benefit resulting from stock option and restricted stock unit transactions (As Restated- see Note 19)	—	3,642	—	—	—	—	—	3,642
Unrealized gain on investments	—	—	—	—	5	—	—	5
Foreign currency translation loss	—	—	—	—	(10)	—	—	(10)
Net income (As Restated- see Note 19)	—	—	—	—	—	72,081	20	72,101
Balance at June 30, 2016 (As Restated- see Note 19)	48,999,717	279,465	(445,028)	(2,030)	(85)	419,119	184	696,653
Exercise of stock options, net of taxes	1,007,065	10,878	—	—	—	—	—	10,878
Release of common stock shares upon vesting of restricted stock units	411,739	—	—	—	—	—	—	—
Shares withheld for the withholding on vesting of restricted stock units	(144,994)	(3,554)	—	—	—	—	—	(3,554)
Purchase of treasury stock	—	—	(888,097)	(18,461)	—	—	—	(18,461)
Stock-based compensation	—	19,665	—	—	—	—	—	19,665
Tax benefit resulting from stock option and restricted stock unit transactions	—	1,817	—	—	—	—	—	1,817
Unrealized loss on investments	—	—	—	—	(11)	—	—	(11)
Foreign currency translation gain	—	—	—	—	19	—	—	19
Net income (loss)	—	—	—	—	—	66,854	(14)	66,840

Balance at June 30, 2017	<u>50,273,527</u>	<u>\$ 308,271</u>	<u>(1,333,125)</u>	<u>\$ (20,491)</u>	<u>\$ (77)</u>	<u>\$ 485,973</u>	<u>\$ 170</u>	<u>\$ 773,846</u>
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See accompanying notes to consolidated financial statements.

SUPER MICRO COMPUTER, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Years Ended June 30,		
	2017	2016 (As Restated- see Note 19)	2015 (As Restated- see Note 19)
OPERATING ACTIVITIES:			
Net income	\$ 66,854	\$ 72,081	\$ 92,555
Reconciliation of net income to net cash provided by (used in) operating activities:			
Depreciation and amortization	16,357	13,282	8,094
Stock-based compensation expense	19,665	16,930	14,436
Excess tax benefits from stock-based compensation	(2,310)	(2,812)	(8,046)
Allowance for doubtful accounts	334	1,216	80
Provision for excess and obsolete inventories	15,729	9,384	5,930
Share of loss from equity investee	303	—	—
Foreign currency exchange loss (gain)	1,274	(1,339)	(830)
Deferred income taxes, net	(5,434)	(5,212)	(3,576)
Changes in operating assets and liabilities:			
Accounts receivable, net (including changes in related party balances of \$(6,828), \$80, and \$492 in fiscal years 2017, 2016, and 2015, respectively)	(149,455)	53,575	(78,186)
Inventories	(235,590)	7,709	(177,557)
Prepaid expenses and other assets (including changes in related party balances of \$(3,705), \$652, and \$(10,274) in fiscal years 2017, 2016, and 2015, respectively)	(2,856)	(23,539)	(11,326)
Accounts payable (including changes in related party balances of \$10,987, \$(21,887), and \$22,188 in fiscal years 2017, 2016, and 2015, respectively)	135,320	(65,835)	81,701
Income taxes payable	(1,873)	(386)	8,979
Accrued liabilities (including changes in related party balances of \$3,096, \$(340), and \$1,364 in fiscal years 2017, 2016, and 2015, respectively)	27,555	12,911	13,893
Other long-term liabilities (including changes in related party balances of \$4,900, \$0, and \$0 in fiscal years 2017, 2016, and 2015, respectively)	17,939	20,022	7,728
Net cash provided by (used in) operating activities	(96,188)	107,987	(46,125)
INVESTING ACTIVITIES:			
Purchases of property, plant and equipment (including payments to related parties of \$(4,570), \$(4,641), and \$(4,070) in fiscal years 2017, 2016, and 2015, respectively)	(29,365)	(34,108)	(35,100)
Change in restricted cash	(340)	(1,020)	(416)
Investment in a privately held company	—	—	(661)
Net cash used in investing activities	(29,705)	(35,128)	(36,177)
FINANCING ACTIVITIES:			
Proceeds from debt, net of debt issuance costs	207,029	34,200	84,900
Repayment of debt	(140,452)	(34,100)	(36,000)
Payments to acquire treasury stock	(18,461)	—	—
Proceeds from exercise of stock options	10,878	12,186	23,338
Excess tax benefits from stock-based compensation	2,310	2,812	8,046
Payments of obligations under capital leases	(253)	(189)	(134)
Advances (payments) under receivable financing arrangements	227	(21)	33
Payment of withholding tax on vesting of restricted stock units	(3,554)	(1,786)	(175)
Net cash provided by financing activities	57,724	13,102	80,008
Effect of exchange rate fluctuations on cash	(45)	(61)	(268)
Net increase (decrease) in cash and cash equivalents	(68,214)	85,900	(2,562)
Cash and cash equivalents at beginning of year	178,820	92,920	95,482
Cash and cash equivalents at end of year	\$ 110,606	\$ 178,820	\$ 92,920
Supplemental disclosure of cash flow information:			
Cash paid for interest	\$ 2,082	\$ 1,632	\$ 933
Cash paid for taxes, net of refunds	\$ 30,809	\$ 36,951	\$ 30,671
Non-cash investing and financing activities:			
Equipment purchased under capital leases	\$ 314	\$ 299	\$ 442
Unpaid property, plant and equipment purchases (including due to related parties of \$1,168, \$2,246 and \$724 as of June 30, 2017, 2016 and 2015, respectively)	\$ 5,056	\$ 10,849	\$ 7,062

Contribution of certain technology rights to equity investee \$ 7,000 \$ — \$ —
See accompanying notes to consolidated financial statements.

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 1. Organization and Summary of Significant Accounting Policies

Organization

Super Micro Computer, Inc. ("Super Micro Computer") was incorporated in 1993. Super Micro Computer is a global leader in server technology and green computing innovation. Super Micro Computer develops and provides high performance server solutions based upon an innovative, modular and open-standard architecture. Super Micro Computer has operations primarily in the United States, the Netherlands, Taiwan, China and Japan.

Basis of Presentation

The accompanying consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America ("U.S. GAAP"). The consolidated financial statements of Super Micro Computer include the accounts of Super Micro Computer and entities consolidated under the variable interest model or the voting interest model. Noncontrolling interests are not presented separately in the consolidated statements of operations, and consolidated statements of comprehensive income as the amounts are immaterial. All intercompany accounts and transactions of Super Micro Computer and its consolidated entities (collectively, the "Company") have been eliminated in consolidation. Equity investments for which the Company is able to exercise significant influence over but does not control the investee and is not the primary beneficiary of the investee's activities are accounted for using the equity method. Investments for which the Company is not able to exercise significant influence over the investee are accounted for under the cost method.

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. Periodically, the Company has generated negative cash flows from operations and has financed its operations through working capital debt. Management believes that the Company's current cash and cash equivalents are adequate to meet its needs, including any debt balances due at maturity, for the next twelve months from the issuance of these consolidated financial statements.

Use of Estimates

U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting periods. Such estimates include, but are not limited to: allowances for doubtful accounts and sales returns, inventory valuation, useful lives of property, plant and equipment, product warranty accruals, stock-based compensation, impairment of investments and long-lived assets, and income taxes. The Company's estimates are evaluated on an ongoing basis and changes in the estimates are recognized prospectively. Actual results could differ from those estimates.

Fair Value of Financial Instruments

The Company accounts for certain assets and liabilities at fair value, which is the price that would be received upon the sale of an asset or paid to transfer a liability in an orderly arms-length transaction between market participants. When measuring fair value, the Company takes into account the characteristics of the asset or liability that a market participant would consider when pricing the asset or liability at the measurement date. The Company considers one or more techniques for measuring fair value: market approach, income approach, and cost approach. The valuation techniques include inputs that are based on three different levels of observability to the market. The Company categorizes each of its fair value measurements in one of these three levels based on the lowest level input that is significant to the fair value measurement in its entirety. These levels are:

- Level 1 - Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities;
- Level 2 - Quoted prices in markets that are not active or financial instruments for which all significant inputs are observable, either directly or indirectly; and
- Level 3 - Prices or valuations that require inputs that are both significant to the fair value measurement and unobservable.

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Accounts receivable and accounts payable are carried at cost, which approximates fair value due to the short maturity of these instruments. Cash equivalents, certificates of deposits and long-term investments are carried at fair value. Short-term and long-term debt is carried at amortized cost, which approximates its fair value based on borrowing rates currently available to the Company for loans with similar terms.

Cash and Cash Equivalents

The Company considers all highly liquid instruments with an original maturity of three months or less from the date of purchase to be cash equivalents. Cash equivalents consist primarily of money market funds and certificates of deposits with original maturities of less than three months.

Long-term Investments

The Company classifies its long-term investments in auction rate securities ("auction rate securities") as non-current available-for-sale investments. Auction rate securities consist of municipal securities. The discounted cash flow model is used to estimate the fair value of the auction rate securities. These investments are recorded in the consolidated balance sheets at fair value. Unrealized gains and losses on these investments are included as a component of accumulated other comprehensive loss, net of tax.

Inventories

Inventories are stated at weighted average cost, subject to lower of cost or market. Inventories consist of purchased parts and raw materials (principally components), work in process (principally products being assembled) and finished goods. Market value represents net realizable value for finished goods and work in process and replacement value for purchased parts and raw materials. The Company evaluates inventory on a quarterly basis for lower of cost or market and excess and obsolescence and, as necessary, writes down the valuation of units based upon usage and sales, anticipated sales price, product obsolescence and other factors. Once a reserve is established, it is maintained until the product to which it relates is sold or scrapped.

The Company receives various rebate incentives from certain suppliers based on its contractual arrangements, including volume-based rebates. The rebates are recognized as a reduction of cost of inventories and reduces the cost of sales in the period when the related inventory is sold.

Property, Plant and Equipment

Property, plant and equipment is recorded at cost and depreciated using the straight-line method over the estimated useful lives of the related assets as follows:

Purchased software	3 to 5 years
Machinery and equipment	3 to 7 years
Furniture and fixtures	5 years
Buildings	39 years
Building improvements	Up to 20 years
Land improvements	15 years
Leasehold improvements	Shorter of lease term or estimated useful life

For assets acquired and financed under capital leases, the present value of the future minimum lease payments is recorded at the date of acquisition as property, plant and equipment with the corresponding amount recorded as a capital lease obligation, and the amortization is computed on a straight-line basis over the shorter of the lease term or estimated useful life.

Long-Lived Assets

The Company evaluates its long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. When the sum of the undiscounted future net cash flows

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

expected to result from the use of the asset and its eventual disposition is less than its carrying amount, an impairment loss would be measured based on the fair value of the asset compared to the carrying amount. No impairment charge has been recorded in any of the periods presented.

Investments in Equity Securities

The Company has an investment in a privately-held company, which is discussed in Note 7, "Investment in a Corporate Venture." Investments in equity securities that do not have a readily determinable fair value are accounted for under the cost method when the Company does not have significant influence over the investee. Adjustments are made to the cost of the investments when performance indicators suggest that the investment is impaired. Dividends received are recorded to other income (expense), net. Investments in equity securities are accounted for using the equity method when the Company has significant influence over the investee. Adjustments are made to the investment for any earnings or losses incurred and are recorded in other income (expense), net. Dividends are considered a return of capital that reduces the cost of the investment.

Revenue Recognition

Product sales. The Company recognizes revenue from sales of products upon meeting all of the following revenue recognition criteria, which is typically met upon shipment or delivery of its products to customers, unless customer acceptance is uncertain or significant obligations to the customer remain: (i) persuasive evidence of an arrangement exists through customer contracts and orders, (ii) the customer takes title and assumes the risks and rewards of ownership, (iii) the sales price charged is fixed or determinable as evidenced by customer contracts and orders and (iv) collectibility is reasonably assured.

The Company estimates and reserves for future sales returns based on a review of its history of actual returns for each major product line. The Company also reduces revenue for customer and distributor programs and incentive offerings such as price protection and rebates as well as cooperative marketing arrangements where the fair value of the benefit identified from the costs cannot be reasonably estimated.

The Company may use distributors to sell products to end customers. Revenue from distributors may be recognized on sell-in or sell-through basis depending on the terms of the arrangement between the Company and distributor.

Services sales. The Company's sale of services mainly consists of extended warranty and on-site services. These services are sold at the time of the sale of the underlying products. Revenue related to extended warranty commences upon the expiration of the standard warranty period and is recognized ratably over the contractual period. Revenue related to on-site services commences upon recognition of the product sale and is recognized ratably over the contractual period. These service contracts are typically one to five years in length. Service revenue has been less than 10% of net sales for all periods presented and is not separately disclosed.

Multiple-element arrangements. Certain of the Company's arrangements contain multiple elements, consisting of both the Company's products and services. Revenue allocated to each element is recognized when all the revenue recognition criteria are met for that element.

The Company allocates arrangement consideration at the inception of an arrangement to all deliverables, if they represent a separate unit of accounting, based on their relative estimated stand-alone selling prices. A deliverable qualifies as a separate unit of accounting when the delivered element has stand-alone value to the customer. The guidance establishes the following hierarchy to determine the relative estimated stand-alone selling price to be used for allocating arrangement consideration to deliverables: (i) vendor-specific objective evidence of fair value ("VSOE"), (ii) third-party evidence of selling price ("TPE") if VSOE is not available, or (iii) the vendor's best estimated selling price ("BESP") if neither VSOE nor TPE are available.

The Company does not have VSOE for deliverables in its arrangements, and TPE is generally not available because its products are highly differentiated, and the Company is unable to obtain reliable information on the products and pricing practices of the Company's competitors. BESP reflects the Company's estimate of what the selling price of a deliverable would be if it were sold regularly on a stand-alone basis.

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

As such, BESP is generally used to allocate the total arrangement consideration at the arrangement inception. The Company determines BESP for a product by considering multiple factors including, but not limited to, geographies, customer types, internal costs, gross margin objectives and pricing practices.

Allowances for Doubtful Accounts

Customers are subjected to a credit review process that evaluates each customer's financial position and ability to pay. On a quarterly basis, the Company makes estimates of its uncollectible accounts receivable by analyzing the aging of accounts receivable, history of bad debts, customer concentrations, customer-credit-worthiness, and current economic trends to evaluate the adequacy of the allowance for doubtful accounts. The Company's provision for bad debt was \$0.3 million, \$1.2 million and \$0.1 million in fiscal years 2017, 2016 and 2015, respectively.

Cost of Sales

Cost of sales primarily consists of the costs of materials, contract manufacturing, in-bound shipping, personnel and related expenses including stock-based compensation, equipment and facility expenses, warranty costs and provision for lower of cost or market and excess and obsolete inventory.

Product Warranties

The Company offers product warranties ranging from 15 to 39 months against any defective products. The Company accrues for estimated returns of defective products at the time revenue is recognized based on historical warranty experience and recent trends. The Company monitors warranty obligations and may make revisions to its warranty reserve if actual costs of product repair and replacement are significantly higher or lower than estimated. Accruals for anticipated future warranty costs are charged to cost of sales and included in accrued liabilities and other long-term liabilities. The Company adjusts its changes in estimates on an ongoing basis as a result of new product introductions or changes in unit volumes compared with its historical experience, or if the cost of servicing warranty claims is greater or lesser than expected, and the Company accounts for the changes in estimates prospectively. The following table presents for the fiscal years ended June 30, 2017, 2016 and 2015, the reconciliation of the changes in accrued warranty costs which is included as a component of accrued liabilities and other long-term liabilities (in thousands):

	Years Ended June 30,		
	2017	2016	2015
Balance, beginning of year	\$ 7,129	\$ 7,700	\$ 7,083
Provision for warranty	21,642	19,579	15,975
Costs utilized	(21,256)	(18,041)	(15,154)
Change in estimated liability for pre-existing warranties	206	(2,109)	(204)
Balance, end of year	\$ 7,721	\$ 7,129	\$ 7,700
Current portion	5,976	5,816	6,015
Long-term portion	\$ 1,745	\$ 1,313	\$ 1,685

Research and Development

Research and development costs are expensed as incurred and consist primarily of salaries, consulting services, other direct expenses and other engineering expenses. The Company occasionally receives funding from certain suppliers and customers towards its development efforts. Such amounts are recorded as a reduction of research and development expenses and were \$10.3 million, \$6.9 million and \$6.3 million for the fiscal years ended June 30, 2017, 2016 and 2015, respectively.

Cooperative Marketing Arrangements

The Company has arrangements with resellers of its products to reimburse the resellers for cooperative marketing costs meeting specified criteria. The Company accrues the cooperative marketing costs based on these arrangements and its estimate for resellers' claims for marketing activities. These costs are recorded as a reduction of revenue in the consolidated statements of operations, as the fair value of the benefit identified from these costs cannot be reasonably estimated. Total

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

cooperative marketing costs recorded as reductions to revenue for the fiscal years ended June 30, 2017, 2016 and 2015, were \$8.1 million, \$7.7 million and \$7.7 million, respectively.

Advertising Costs

Advertising costs are expensed as incurred. Total advertising and promotional expenses were \$5.4 million, \$4.1 million and \$3.0 million for the fiscal years ended June 30, 2017, 2016 and 2015, respectively.

Stock-Based Compensation

The Company measures and recognizes compensation expense for all share-based awards made to employees and non-employee members of the Board of Directors, including stock options and restricted stock units ("RSUs"). The Company is required to estimate the fair value of share-based awards on the date of grant. The value of awards that are ultimately expected to vest is recognized as an expense over the requisite service periods. The fair value of RSUs is based on the closing market price of the Company's common stock on the date of grant. The Company estimated the fair value of stock options granted using a Black-Scholes option pricing model and a single option award approach. This model requires the Company to make estimates and assumptions with respect to the expected term of the option and the expected volatility of the price of the Company's common stock. The fair value is then amortized on a straight-line basis over the requisite service periods of the awards, which is generally the vesting period.

The expected term represents the period that the Company's stock-based awards are expected to be outstanding and was determined based on a combination of the Company's peer group and historical experience. The expected volatility is based on a combination of the Company's implied and historical volatility. In addition, forfeitures of share-based awards are estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. The Company uses historical data to estimate pre-vesting option and RSU forfeitures and record stock-based compensation expense only for those awards that are expected to vest.

Leases

Leases are evaluated and recorded as capital leases if one of the following is true at inception: (a) the present value of minimum lease payments meets or exceeds 90% of the fair value of the asset, (b) the lease term is greater than or equal to 75% of the economic life of the asset, (c) the lease arrangement contains a bargain purchase option, or (d) title to the property transfers to the Company at the end of the lease. The Company records an asset and liability for capital leases at present value of the minimum lease payments based on the incremental borrowing rate. Assets are depreciated over the useful life in accordance with the Company's depreciation policy while rental payments and interest on the liability are accounted for using the effective interest method.

Leases that are not classified as capital leases are accounted for as operating leases. Operating lease agreements that have tenant improvement allowances are evaluated for lease incentives. For leases that contain escalating rent payments, the Company recognizes rent expense on a straight-line basis over the lease term, with any lease incentives amortized as a reduction of rent expense over the lease term.

Shipping and Handling Fees

The Company records costs related to shipping and handling in sales and marketing expenses. Shipping and handling fees billed to customers are included in net sales.

Income Taxes

The Company accounts for income taxes under an asset and liability approach. Deferred income taxes reflect the impact of temporary differences between assets and liabilities recognized for financial reporting purposes and such amounts recognized for income tax reporting purposes, net operating loss carry-forwards and other tax credits measured by applying enacted tax laws related to the financial statement periods. Valuation allowances are provided when necessary to reduce deferred tax assets to an amount that is more likely than not to be realized.

The Company recognizes tax liabilities for uncertain income tax positions on the income tax return based on the two-step process. The first step is to determine whether it is more likely than not that each income tax position would be

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

sustained upon audit. The second step is to estimate and measure the tax benefit as the amount that has a greater than 50% likelihood of being realized upon ultimate settlement with the tax authority. Estimating these amounts requires the Company to determine the probability of various possible outcomes. The Company evaluates these uncertain tax positions on a quarterly basis. This evaluation is based on the consideration of several factors, including changes in facts or circumstances, changes in applicable tax law, settlement of issues under audit and new exposures. If the Company later determines that its exposure is lower or that the liability is not sufficient to cover its revised expectations, the Company adjusts the liability and effects a related charge in its tax provision during the period in which the Company makes such determination.

Variable Interest Entities

The Company determines at the inception of each arrangement whether an entity in which the Company holds an investment or in which the Company has other variable interests in is considered a variable interest entity ("VIE"). The Company consolidates VIEs when it is the primary beneficiary. The primary beneficiary of a VIE is the party that meets both of the following criteria: (1) has the power to make decisions that most significantly affect the economic performance of the VIE; and (2) has the obligation to absorb losses or the right to receive benefits that in either case could potentially be significant to the VIE. Periodically, the Company assesses whether any changes in the interest or relationship with the entity affect the determination of whether the entity is still a VIE and, if so, whether the Company is the primary beneficiary. If the Company is not the primary beneficiary in a VIE, the Company accounts for the investment under the equity method or cost method in accordance with the applicable GAAP.

The Company has concluded that Ablecom Technology, Inc. ("Ablecom") and its affiliate, Compuware Technology, Inc. ("Compuware") are VIEs in accordance with applicable accounting standards and guidance; however, the Company is not the primary beneficiary as it does not have the power to direct the activities that are most significant to the entities and therefore, the Company does not consolidate these entities. In performing its analysis, the Company's management considered its explicit arrangements with Ablecom and Compuware, including the supplier arrangements. Also, as a result of the substantial related party relationships between the Company and these entities, management considered whether any implicit arrangements exist that would cause the Company to protect those related parties' interests from suffering losses. Management determined that no implicit arrangements exist with Ablecom, Compuware or their shareholders.

The Company and Ablecom jointly established Super Micro Asia Science and Technology Park, Inc. (the "Management Company") in Taiwan to manage the common areas shared by the Company and Ablecom for its separately constructed manufacturing facilities. In fiscal year 2012, each company contributed \$0.2 million and owns 50% of the Management Company. The Company has concluded that the Management Company is a VIE, and although the operations of the Management Company are independent of the Company, through governance rights, the Company has the power to direct the activities that are most significant to the Management Company. Therefore, the Company concluded that it is the primary beneficiary of the Management Company. For the fiscal years ended 2017, 2016 and 2015, the accounts of the Management Company have been consolidated with the accounts of Super Micro Computer, and a noncontrolling interest has been recorded for Ablecom's interests in the net assets and operations of the Management Company. In fiscal years 2017, 2016 and 2015, \$(14,000), \$20,000 and \$(11,000) of net income (loss) attributable to Ablecom's interest was included in the Company's general and administrative expenses in the consolidated statements of operations, respectively.

Foreign Currency Transactions

The functional currency of the Company's international subsidiaries is the U.S. dollar, with the exception of Super Micro Asia and Technology Park, Inc., a consolidated variable interest entity. Monetary assets and liabilities of the Company's international subsidiaries that are denominated in the local currency are remeasured into U.S. dollars at period-end exchange rates. Non-monetary assets and liabilities that are denominated in the local currency are remeasured into U.S. dollars at the historical rates. Revenue and expenses that are denominated in the local currency are remeasured into U.S. dollars at the average exchange rates during the period. Remeasurement of foreign currency accounts and resulting foreign exchange transaction gains and losses, which have not been material, are reflected in the consolidated statements of operations in other income (expense), net.

The functional currency of Super Micro Asia and Technology Park, Inc. is New Taiwanese Dollar ("NTD\$"). Assets and liabilities are translated to U.S. dollars at the period-end exchange rate. Revenues and expenses are translated using the average exchange rate for the period. The effects of foreign currency translation are included in stockholders' equity as a

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

component of accumulated other comprehensive loss in the accompanying consolidated balance sheets and periodic movements are summarized as a line item in the consolidated statements of comprehensive income.

Net Income Per Common Share

Basic net income per common share is computed by dividing net income by the weighted-average number of shares of common stock outstanding during the period. Diluted net income per common share is computed by dividing net income by the weighted-average number of shares of common stock outstanding during the period increased to include the number of additional shares of common stock that would have been outstanding if the potentially dilutive securities had been issued. Potentially dilutive securities include outstanding stock options and unvested RSUs.

Under the treasury stock method, an increase in the fair market value of the Company's common stock results in a greater dilutive effect from outstanding stock options and RSUs. Additionally, the exercise of stock options and the vesting of RSUs results in a further dilutive effect on net income per share.

The computation of basic and diluted net income per common share is as follows (in thousands, except per share amounts):

	Years Ended June 30,		
	2017	2016	2015
Numerator:			
Net income	\$ 66,854	\$ 72,081	\$ 92,555
Denominator:			
Weighted-average shares outstanding	48,383	47,917	46,434
Effect of dilutive securities	3,296	3,919	3,660
Weighted-average diluted shares	51,679	51,836	50,094
Basic net income per common share	\$ 1.38	\$ 1.50	\$ 1.99
Diluted net income per common share	\$ 1.29	\$ 1.39	\$ 1.85

For the fiscal years ended June 30, 2017, 2016 and 2015, the Company had stock options and RSUs outstanding that could potentially dilute basic earnings per share in the future, but were excluded from the computation of diluted net income per share in the periods presented, as their effect would have been anti-dilutive. The anti-dilutive common share equivalents resulting from outstanding equity awards were 1,620,000, 1,196,000 and 3,805,000 for the fiscal years ended June 30, 2017, 2016 and 2015, respectively.

Concentration of Supplier Risk

Certain raw materials used by the Company in the manufacture of its products are available from a limited number of suppliers. Shortages could occur in these essential materials due to an interruption of supply or increased demand in the industry. One supplier accounted for 31.0%, 35.2%, and 28.7% of total purchases for the fiscal years ended June 30, 2017, 2016 and 2015, respectively. Ablecom and Compuware, related parties of the Company as noted in Note 11, "Related Party Transactions", accounted for 11.1%, 12.8% and 13.8% of total cost of sales for the fiscal years ended June 30, 2017, 2016 and 2015, respectively.

Concentration of Credit Risk

Financial instruments which potentially subject the Company to concentration of credit risk consist primarily of cash and cash equivalents, long-term investments and accounts receivable. No single customer accounted for 10% or more of net sales in fiscal year 2017. In fiscal years 2016 and 2015, one customer accounted for 11.4% and 10.4%, respectively, of net sales. No customer accounted for 10% or more of accounts receivable as of June 30, 2017, and one customer accounted for 10.5% of the Company's accounts receivables as of June 30, 2016.

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Recent Accounting Pronouncements

In May 2014, the Financial Accounting Standards Board (“FASB”) issued new accounting guidance, *Revenue from Contracts with Customers*, that supersedes nearly all U.S. GAAP on revenue recognition and eliminates industry-specific guidance. The new guidance provides a unified model in determining when and how revenue is recognized with the core principle that revenue should be recognized when a customer obtains control of promised goods or services in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. Since its issuance, the FASB has issued several amendments to the new revenue standard.

The new standard is effective for the Company from July 1, 2018. The Company intends to adopt the new standard using the modified retrospective method. The Company has completed its preliminary accounting assessment of the adoption of the new standard. The Company is in the process of finalizing the accounting assessment, establishing new accounting policies, implementing systems and processes and internal controls necessary to support the requirements of the new standard. The Company will continue to update its assessment as more information becomes available. The Company cannot reasonably estimate quantitative information related to the impact of the new guidance on its consolidated financial statements at this time but expects the implementation of the new guidance to impact the recognition of its revenue as follows:

- Substantially all of the Company's current revenue is from the sale of hardware products. The Company does not expect any material changes to the timing or amount of revenue for these types of sales under the new guidance, except for sales to distributors where the Company currently accounts for such sales on a sell-through basis, in which case the new guidance is expected to accelerate recognition of revenue.
- For extended warranty and on-site services and software, the Company is assessing the impact and timing to revenue from the implementation of the new guidance. However, the Company does not currently expect the new guidance to have a material impact on its revenue for these types of arrangements.
- For costs incurred to fulfill or obtain a customer contract, the Company is assessing the impact from the implementation of the new guidance. However, the Company does not currently expect the new guidance to have a material impact related to these costs.
- The Company's revenue disclosures are expected to expand.

In April 2015, the FASB issued an amendment to the accounting guidance, *Interest-Imputation of Interest: Simplifying the Presentation of Debt Issuance Costs*. This amendment requires that debt issuance costs related to a recognized debt liability be presented in the balance sheet as a direct deduction from the carrying amount of that debt liability, consistent with debt discounts. In August 2015, the FASB issued an amendment to the accounting guidance, *Presentation and Subsequent Measurement of Debt Issuance Costs Associated with Line-of-Credit Arrangements*. This amendment clarifies that an entity may defer, and present debt issuance costs associated with line-of-credit arrangements as an asset and subsequently amortize the deferred debt issuance costs ratably over the term of the line-of-credit arrangement, regardless of whether there are any outstanding borrowings on the line-of-credit arrangement. These amendments should be applied retrospectively to all prior periods presented in the consolidated financial statements. The Company adopted these amendments in the first quarter of fiscal year 2017. There was no material impact on its consolidated financial statement disclosures, results of operations and financial position.

In July 2015, the FASB issued an amendment to the accounting guidance, *Inventory: Simplifying the Measurement of Inventory*. The amendment requires entities to measure inventory at the lower of cost and net realizable value thereby simplifying the current guidance under which an entity must measure inventory at the lower of cost or market. The amendment is effective for the Company from July 1, 2018. The Company does not expect this guidance to have a material impact on the consolidated financial statements and related disclosures.

In February 2016, the FASB issued an amendment to the accounting guidance, *Leases*. The amendment will supersede the existing lease guidance, including on-balance sheet recognition of operating leases for lessees. Since its issuance, the FASB has issued several amendments to the new lease standard. The standard is effective for the Company from July 1, 2019 and the Company will apply this standard using the modified retrospective approach. Early adoption is

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

permitted. The Company is currently evaluating the effect the guidance will have on its consolidated financial statement disclosures, results of operations and financial position.

In March 2016, the FASB issued new accounting guidance, *Compensation-Stock Compensation: Improvements to Employee Share-Based Payment Accounting* on the accounting for certain aspects of share-based payment to employees, including the accounting for income taxes, forfeitures, and statutory tax withholding requirements as well as classification in the statement of cash flows. Early adoption is permitted for any interim or annual periods. This guidance is effective for the Company from July 1, 2017. The adoption of this guidance will result in the recognition of excess tax benefits in the Company's provision for income taxes rather than paid-in capital, as well as the adjustment in stock-based compensation expense as a result of its change in forfeiture policy. The new guidance eliminates the requirement to delay the recognition of excess tax benefits until it reduces current taxes payable. The new guidance also requires the Company to record, subsequent to the adoption, excess tax benefits and tax deficiencies in the period these arise. The Company is currently evaluating the effect the guidance will have on its consolidated financial statement disclosures, results of operations and financial position.

In March 2016, the FASB issued new accounting guidance *Investments - Equity Method and Joint Ventures: Simplifying the Transition to Equity Method of Accounting*. The amendments in this update eliminate the requirement that an entity retroactively adopt the equity method of accounting if an investment qualifies for use of the equity method as a result of increase in ownership interest or degree of influence. In accordance with the amendments, an equity method investor will begin to apply the equity method when the investor obtains significant influence without having to retroactively adjust the investment and record a cumulative catch up for the years when the investment did not qualify for the equity method of accounting. The guidance is effective for the Company from July 1, 2017. The Company does not expect this guidance to have a material impact on the consolidated financial statements and related disclosures.

In June 2016, the FASB issued authoritative guidance, *Financial Instruments-Credit Losses: Measurement of Credit Losses on Financial Instruments*, that amends the impairment model for certain financial assets by requiring use of an expected loss methodology, which will result in more timely recognition of credit losses. The amendment is effective for the Company from July 1, 2020. Early adoption is permitted. The Company is currently evaluating the effect the guidance will have on its consolidated financial statement disclosures, results of operations and financial position.

In August 2016, the FASB issued an amendment to the accounting guidance, *Statement of Cash Flows: Classification of Certain Cash Receipts and Cash Payments*. This amendment consists of eight provisions that provide guidance on the classification of certain cash receipts and cash payments. If practicable, this amendment should be applied using a retrospective transition method to each period presented. For the provisions that are impracticable to apply retrospectively, those provisions may be applied prospectively as of the earliest date practicable. This amendment is effective for the Company from July 1, 2018. Early adoption is permitted. The Company is currently evaluating the effect the guidance will have on its consolidated statement of cash flows.

In October 2016, the FASB issued an amendment to the accounting guidance, *Intra-Entity Transfers of Assets Other Than Inventory*. This amendment simplifies the accounting for income tax consequences of intra-entity transfers of assets other than inventory by requiring recognition of current and deferred income tax consequences when such transfers occur. This amendment is effective for the Company from July 1, 2018. The Company is currently evaluating the effect the guidance will have on its consolidated financial statement disclosures, results of operations and financial position.

In November 2016, the FASB issued an amendment to the accounting guidance, *Statement of Cash Flows: Restricted Cash*. This amendment addresses presentations of total cash, cash equivalents, and amounts generally described as restricted cash or restricted cash equivalents. Amounts generally described as restricted cash and restricted cash equivalents should be included with cash and cash equivalents when reconciling the beginning-of-period and end-of-period total amounts shown on the statement of cash flows. This amendment is effective for the Company from July 1, 2018. Early adoption is permitted. The Company does not expect this amendment to have a material impact, though it will change the presentation of the consolidated statement of cash flows.

In February 2017, the FASB issued new accounting guidance, *Other Income-Gains and Losses from the Derecognition of Nonfinancial Assets: Clarifying the Scope of Asset Derecognition Guidance and Accounting for Partial Sales of Nonfinancial Assets*. This guidance clarifies the scope and application on the sale or transfer of nonfinancial assets and in substance nonfinancial assets to noncustomers, including partial sales. The amendments are effective at the same time as the new revenue standard. This amendment is effective for the Company from July 1, 2018. The Company is currently

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

evaluating the effect the guidance will have on its consolidated financial statement disclosure, results of operations and financial position.

In February 2018, the FASB issued amended guidance to allow a reclassification from accumulated other comprehensive income to retained earnings for stranded tax effects resulting from the Tax Cuts and Jobs Act ("2017 Tax Act"). Consequently, the amendments eliminate the stranded tax effects resulting from the 2017 Tax Act and will improve the usefulness of information reported to financial statement users. However, because the amendments only relate to the reclassification of the income tax effects of the 2017 Tax Act, the underlying guidance that requires that the effect of a change in tax laws or rates be included in income from continuing operations is not affected. The amendments also require certain disclosures about stranded tax effects. The new standard is effective for the Company from July 1, 2019. The Company is currently evaluating the effect the guidance will have on its consolidated financial statement disclosures, results of operations and financial position.

In June 2018, the FASB issued amended guidance to expand the scope of *ASC 718 - Compensation-Stock Compensation*, to include share-based payment transactions for acquiring goods and services from non-employees. The amendments specify that the guidance applies to all share-based payment transactions in which a grantor acquires goods or services to be used or consumed in a grantor's own operations by issuing share-based payment awards. The new amendment is effective for the Company from July 1, 2019. The Company is currently evaluating the effect the guidance will have on its consolidated financial statement disclosures, results of operations and financial position.

In August 2018, the FASB issued amended guidance, *Fair Value Measurement: Disclosure Framework-Changes to the Disclosure Requirements for Fair Value Measurement*, to modify the disclosure requirements on fair value measurements based on the concepts in the Concepts Statement, including the consideration of costs and benefits. The new standard is effective for the Company from July 1, 2020. The Company is currently evaluating the effect the guidance will have on its consolidated financial statement disclosures.

In August 2018, the Securities and Exchange Commission ("SEC") adopted amendments to certain disclosure requirements in *Securities Act Release No. 33-10532, Disclosure Update and Simplification*. The amendments became effective on November 5, 2018. The SEC staff subsequently indicated that it would not object if a filer's first presentation of changes in shareholders' equity is included in its Form 10-Q for the quarter that begins after the final rule's effective date. Among the amendments is the requirement to present the changes in shareholders' equity in the interim financial statements (either in a separate statement or footnote) in Quarterly Reports on Form 10-Q. The analysis should present a reconciliation of the beginning balance to the ending balance of each period for which a consolidated statement of operations is required to be filed. The Company will include the first presentation of changes in consolidated statement of stockholders' equity on Form 10-Q in its first quarter of fiscal 2019.

In August 2018, the FASB issued amended guidance to align the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software (and hosting arrangements that include an internal use software license). The accounting for the service element of a hosting arrangement that is a service contract is not affected by the amendments. According to the amendments, the entity shall determine which implementation costs to capitalize as an asset related to the service contract and which costs to expense. It requires the entity (customer) to expense the capitalized implementation costs of a hosting arrangement that is a service contract over the term of the hosting arrangement. The new standard is effective for the Company from July 1, 2020. The Company is currently evaluating the effect the guidance will have on its consolidated financial statement disclosures, results of operations and financial position.

Note 2. Fair Value Disclosure

The financial assets of the Company measured at fair value on a recurring basis are included in cash equivalents, other assets and long-term investments. The Company classifies its cash equivalents and other assets within Level 1 or Level 2 in the fair value hierarchy because the Company uses quoted prices in active markets or alternative pricing sources and models using market observable inputs to determine their fair value. The Company's long-term investments in auction rate securities are classified within Level 3 of the fair value hierarchy as the determination of their fair values was not based on observable inputs as of June 30, 2017 and 2016. See Note 1, "Organization and Summary of Significant Accounting Policies", for a discussion of the Company's policies regarding the fair value hierarchy. The Company has used a discounted cash flow model to estimate the fair value of the auction rate securities as of June 30, 2017 and 2016. The material factors used in preparing the discounted cash

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

flow model are (i) the discount rate utilized to present value the cash flows, (ii) the time period until redemption and (iii) the estimated rate of return.

The following table sets forth the Company's cash equivalents, certificates of deposit, and long-term investments as of June 30, 2017 and 2016 which are measured at fair value on a recurring basis by level within the fair value hierarchy. These are classified based on the lowest level of input that is significant to the fair value measurement (in thousands):

<u>June 30, 2017</u>	Level 1	Level 2	Level 3	Asset at Fair Value
Money market funds (1)	\$ 1,126	\$ —	\$ —	\$ 1,126
Certificates of deposit (2)	—	1,151	—	1,151
Auction rate securities	—	—	2,625	2,625
Total assets measured at fair value	<u>\$ 1,126</u>	<u>\$ 1,151</u>	<u>\$ 2,625</u>	<u>\$ 4,902</u>

<u>June 30, 2016</u>	Level 1	Level 2	Level 3	Asset at Fair Value
Money market funds (1)	\$ 727	\$ —	\$ —	\$ 727
Certificates of deposit (2)	—	1,316	—	1,316
Auction rate securities	—	—	2,643	2,643
Total assets measured at fair value	<u>\$ 727</u>	<u>\$ 1,316</u>	<u>\$ 2,643</u>	<u>\$ 4,686</u>

(1) \$0.3 million and \$0.3 million in money market funds are included within cash and cash equivalents and \$0.8 million and \$0.4 million in money market funds are included in restricted cash within other assets on the consolidated balance sheets as of June 30, 2017 and 2016, respectively.

(2) \$0.2 million and \$0.3 million in certificates of deposit are included in cash and cash equivalents and \$1.0 million and \$1.0 million in certificates of deposit are included in restricted cash within other assets on the consolidated balance sheets as of June 30, 2017 and 2016, respectively.

The above table excludes \$110.1 million and \$178.2 million of cash included in cash and cash equivalents on the consolidated balance sheets and \$0.4 million and \$0.5 million of restricted cash included in other assets on the consolidated balance sheets held by the Company as of June 30, 2017 and 2016, respectively. There were no transfers between Level 1, Level 2 or Level 3 securities in fiscal years 2017 and 2016.

The following table provides a reconciliation of the Company's financial assets measured at fair value on a recurring basis, consisting of long-term auction rate securities, using significant unobservable inputs (Level 3) for fiscal years 2017 and 2016 (in thousands):

	Years Ended June 30,	
	2017	2016
Balance as of the beginning of the fiscal year	\$ 2,643	\$ 2,633
Total unrealized gains (losses) included in other comprehensive income	(18)	10
Balance as of the end of the fiscal year	<u>\$ 2,625</u>	<u>\$ 2,643</u>

The following is a summary of the Company's long-term investments as of June 30, 2017 and 2016 (in thousands):

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

	June 30, 2017			
	Amortized Cost	Gross Unrealized Holding Gains	Gross Unrealized Holding Losses	Fair Value
Auction rate securities	\$ 2,750	\$ —	\$ (125)	\$ 2,625

	June 30, 2016			
	Amortized Cost	Gross Unrealized Holding Gains	Gross Unrealized Holding Losses	Fair Value
Auction rate securities	\$ 2,750	\$ —	\$ (107)	\$ 2,643

The Company measures the fair value of outstanding debt for disclosure purposes on a recurring basis. As of June 30, 2017 and 2016, total debt of \$161.4 million and \$93.6 million, respectively, are reported at amortized cost. This outstanding debt is classified as Level 2 as it is not actively traded and is valued using a discounted cash flow model that uses observable market inputs. Based on the discounted cash flow model, the fair value of the outstanding debt approximates amortized cost.

During fiscal year 2017 and 2016, the Company did not record any other-than-temporary impairments on financial assets required to be measured at fair value on a nonrecurring basis.

Note 3. Accounts Receivable Allowances

The Company has established an allowance for doubtful accounts and an allowance for sales returns. The allowance for doubtful accounts is based upon the age of outstanding receivables, credit risk of specific customers, historical trends related to past losses and other relevant factors. The Company also provides its customers with product return rights. A provision for such returns is provided for in the same period that the related sales are recorded based upon contractual return rights and historical trends. Accounts receivable allowances as of June 30, 2017, 2016 and 2015 consisted of the following (in thousands):

	Beginning Balance	Charged to Cost and Expenses	Additions/ (Deductions)	Ending Balance
Allowance for doubtful accounts:				
Year ended June 30, 2017	\$ 2,033	\$ 334	\$ 3	\$ 2,370
Year ended June 30, 2016	952	1,216	(135)	2,033
Year ended June 30, 2015	1,474	80	(602)	952
Allowance for sales returns				
Year ended June 30, 2017	\$ 380	\$ 1,745	\$ (1,796)	\$ 329
Year ended June 30, 2016	430	2,288	(2,338)	380
Year ended June 30, 2015	448	2,069	(2,087)	430

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Note 4. Inventories

Inventories as of June 30, 2017 and 2016 consisted of the following (in thousands):

	June 30,	
	2017	2016
Finished goods	\$ 577,345	\$ 399,776
Purchased parts and raw materials	124,981	95,344
Work in process	34,342	21,687
Total inventories	<u>\$ 736,668</u>	<u>\$ 516,807</u>

During fiscal years 2017, 2016 and 2015, the Company recorded a provision for excess and obsolete inventory to cost of sales totaling \$15.7 million, \$9.4 million and \$5.9 million, respectively.

Note 5. Property, Plant, and Equipment

Property, plant and equipment as of June 30, 2017 and 2016 consisted of the following (in thousands):

	June 30,	
	2017	2016
Buildings	\$ 71,665	\$ 71,665
Land	70,495	70,454
Machinery and equipment	60,593	53,282
Buildings construction in progress (1)	24,039	15,803
Buildings and leasehold improvements	14,942	10,941
Purchased software	14,576	14,452
Furniture and fixtures	13,353	10,364
	269,663	246,961
Accumulated depreciation and amortization	(74,087)	(59,012)
Property, plant and equipment, net	<u>\$ 195,576</u>	<u>\$ 187,949</u>

(1) Primarily relates to the development and construction costs associated with the Company's Green Computing Park located in San Jose, California.

Note 6. Prepaid Expenses and Other Assets

Prepaid expenses and other current assets as of June 30, 2017 and 2016 consisted of the following (in thousands):

	June 30,	
	2017	2016
Receivables from vendors (1)	\$ 78,656	\$ 71,470
Prepaid expenses	5,736	5,405
Deferred service costs	2,910	1,451
Others	1,911	1,101
Total prepaid expenses and other current assets	<u>\$ 89,213</u>	<u>\$ 79,427</u>

(1) Includes receivables from contract manufacturers based on certain buy-sell arrangements of \$73.8 million and \$63.6 million as of June 30, 2017 and June 30, 2016, respectively.

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Other long-term assets as of June 30, 2017 and 2016 consisted of the following (in thousands):

	June 30,	
	2017	2016
Long-term deferred service costs	\$ 3,253	\$ 3,497
Prepaid software license	2,593	3,870
Restricted cash (1)	2,191	1,851
Cost method investments	1,529	1,881
Prepaid royalty license	499	748
Deposits	368	909
Others	144	129
Total other assets	\$ 10,577	\$ 12,885

(1) As of June 30, 2017 and 2016, restricted cash consisted primarily of certificates of deposits pledged as security for one irrevocable letter of credit related to a warehouse lease, three deposits to an escrow account required by the Company's worker's compensation program, one deposit required for the Company's bonded warehouse in Taiwan, deposits to bank guarantees for import duty required by the customs authority in Taiwan and bank guarantees in connection with office leases in the Netherlands.

Note 7. Investment in a Corporate Venture

In October 2016, the Company entered into agreements pursuant to which the Company contributed certain technology rights in connection with an investment in a privately-held company (the "Corporate Venture") located in China to expand the Company's presence in China. The Corporate Venture is 30% owned by the Company and 70% owned by another company in China. The transaction was closed in the third fiscal quarter of 2017 and the investment has been accounted for using the equity method. As such, the Corporate Venture is also a related party. As of June 30, 2017, the Company's equity investment in the Corporate Venture was \$6.1 million and was recorded under investment in equity investee on the Company's consolidated balance sheet. The Company's share of losses of the Corporate Venture were immaterial for the fiscal year ended June 30, 2017 and were included in other income (expense), net in the Company's consolidated statements of operations. The Company recorded a deferred gain related to the contribution of certain technology rights of \$7.0 million in the third fiscal quarter of 2017. The amortization of the deferred gain is being recognized as a credit to research and development expenses in the Company's consolidated statement of operations over a period of five years which represents the estimated period over which the remaining obligations will be fulfilled. As of June 30, 2017, the Company had unamortized deferred gain balance of \$1.4 million in accrued liabilities and \$4.9 million in other long-term liabilities in the Company's consolidated balance sheets. The Company monitors the investment for events or circumstances indicative of potential other-than-temporary impairment and makes appropriate reductions in carrying values if determined that an impairment charge is required. No impairment charge was recorded for the fiscal year ended June 30, 2017.

Additionally, the Company sold products worth \$10.9 million to the Corporate Venture in the fiscal year ended June 30, 2017 and the Company's share of intra-entity profits on the products which remained unsold by the Corporate Venture as of June 30, 2017 have been eliminated and reduced the Company's investment in the Corporate Venture. The Company had a \$6.7 million accounts receivable due from the Corporate Venture as of June 30, 2017.

Note 8. Accrued Liabilities

Accrued liabilities as of June 30, 2017 and 2016 consisted of the following (in thousands):

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

	June 30,	
	2017	2016
Deferred revenue (1)	\$ 32,957	\$ 22,731
Accrued payroll and related expenses	19,370	15,499
Customer deposits	14,630	8,781
Accrued cooperative marketing expenses	7,292	7,308
Accrued warranty costs	5,976	5,816
Others (2)	32,599	23,461
Total accrued liabilities	\$ 112,824	\$ 83,596

(1) Deferred revenue as of June 30, 2017 and 2016, is comprised primarily of a deferred extended warranty revenue of \$17.5 million and \$15.5 million, respectively, deferred on-site service revenue of \$13.7 million and \$6.2 million, respectively, and other deferred revenue of \$1.8 million and \$1.0 million, respectively.

(2) Includes payables to contract manufacturers for the Company's buy-back liability of \$20.3 million and \$16.1 million as of June 30, 2017 and June 30, 2016, respectively. Also, included in others as of June 30, 2017 is \$1.4 million of deferred gain related to investment in Corporate Venture.

Note 9. Short-term and Long-term Obligations

Short-term and long-term obligations as of June 30, 2017 and 2016 consisted of the following (in thousands):

	June 30,	
	2017	2016
Line of credit:		
Bank of America (1)	\$ 83,199	\$ 62,199
CTBC Bank	19,000	10,100
Total line of credit	102,199	72,299
Term loans:		
Bank of America	40,000	933
CTBC Bank	19,721	20,357
Total term loans	59,721	21,290
Total debt	161,920	93,589
Less: debt issuance costs	(473)	—
Total debt, net of debt issuance costs	161,447	93,589
Current portion, net of debt issuance costs	(161,447)	(53,589)
Long-term portion, net of debt issuance costs	\$ —	\$ 40,000

(1) In July 2016, \$50.0 million of the revolving line of credit was refinanced to a five-year term loan under the new credit agreement with Bank of America and \$40.0 million was reclassified to long-term debt as of June 30, 2016.

Activities under Revolving Lines of Credit and Term Loans

Bank of America

2015 Bank of America Credit Facility

In June 2015, the Company entered into an amendment to the then existing credit agreement with Bank of America N.A. ("Bank of America") which provided for (i) a \$65.0 million revolving line of credit facility that would have matured on November 15, 2015 and (ii) a five-year \$14.0 million term loan facility (collectively, the "2015 Bank of America Credit

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Facility”). The term loan was secured by three buildings located in San Jose, California and the principal and interest was payable monthly through September 30, 2016 with an interest rate at the LIBOR rate plus 1.50% per annum. In May 2016, the Company extended the revolving line of credit to mature on June 30, 2016.

2016 Bank of America Credit Facility

In June 2016, the Company entered into a new credit agreement with Bank of America, which provided for (i) a \$55.0 million revolving line of credit facility including a \$5.0 million letter of credit sublimit that was to mature on June 30, 2017 and (ii) a five-year \$50.0 million term loan facility (collectively, the “2016 Bank of America Credit Facility”). The 2016 Bank of America Credit Facility replaced the 2015 Bank of America Credit Facility. The 2016 Bank of America Credit Facility term loan is secured by seven buildings located in San Jose, California and the property, plant and equipment and the inventory in those buildings. The principal and interest of the 2016 Bank of America Credit Facility term loan are payable monthly through June 30, 2021 with an interest rate at the LIBOR rate plus 1.25% per annum. The interest rate for the 2016 Bank of America Credit Facility revolving line of credit is at the LIBOR rate plus 1.25% per annum. The LIBOR rate was 1.04% at June 30, 2017. The letter of credit bears interest at a rate of 1.25% per annum. In May 2017, the Company entered into an amendment to the 2016 Bank of America Credit Facility to increase the revolving line of credit to \$85.0 million and extended the maturity date of the revolving lines of credit to October 31, 2018. Prior to the maturity, in April 2018, the Company repaid and terminated the 2016 Bank of America Credit Facility with proceeds from a new revolving line of credit (the “2018 Bank of America Credit Facility”).

In June 2016, the Company also entered into a separate credit agreement as a part of the 2016 Bank of America Credit Facility, which provided for a revolving line of credit of \$10.0 million for its Taiwan and Netherlands subsidiaries that was to mature on June 30, 2017. The interest rate of the revolving line of credit is equal to a minimum of 0.9% per annum plus the lender's cost of funds. In December 2016, the Company entered into an amendment to this separate credit agreement to increase the revolving line of credit from \$10.0 million to \$20.0 million. The Company extended the revolving line of credit to mature on October 31, 2018. Under the terms of this separate credit agreement, the Company cannot directly or indirectly pay any dividends, except in limited situations.

As of June 30, 2017 and 2016, the total outstanding borrowings under the 2016 Bank of America Credit Facility term loans was \$40.0 million and \$0.9 million, respectively. The total outstanding borrowings under the 2016 Bank of America Credit Facility revolving lines of credit was \$83.2 million and \$62.2 million as of June 30, 2017 and 2016, respectively. The interest rates for these loans ranged from 1.61% to 2.46% per annum as of June 30, 2017 and from 1.02% to 1.96% per annum as of June 30, 2016, respectively. As of June 30, 2017, the amount of the unused revolving lines of credit with Bank of America under the credit agreements was \$21.8 million. As of June 30, 2017, assets amounting to \$1,168.6 million collateralized the line of credit with Bank of America under the credit agreement, which represent the total assets of the United States headquarters of the Company, except for seven buildings located in San Jose, California and property, plant and equipment and inventory in those buildings. As of June 30, 2017, total assets collateralizing the term loan with Bank of America under the credit agreement were \$67.9 million.

2018 Bank of America Credit Facility

In April 2018, the Company entered into the 2018 Bank of America Credit Facility which replaced the 2016 Bank of America Credit Facility. The 2018 Bank of America Credit Facility provides for a revolving credit line and other financial accommodations of up to \$250.0 million extended by certain lenders. The 2018 Bank of America Credit Facility expires after 364 days, or at the option of the Company, and if certain conditions are satisfied, including the Company being current on all of its delinquent quarterly and annual filings with the SEC, may convert into a 5-year revolving credit facility. If and upon such conversion, the lenders for the 2018 Bank of America Credit Facility shall extend, in aggregate, a principal amount of up to \$400.0 million. Prior to the 2018 Bank of America Credit Facility's conversion to the 5-year revolving credit facility, interest shall be at the LIBOR rate plus 2.75% per annum. Upon the 2018 Bank of America Credit Facility converting to the 5-year revolving credit facility, interest shall accrue at the LIBOR rate plus an amount between 1.50% and 2.00% for loans to both Super Micro Computer and Super Micro Computer B.V.. Interest accrued on any loans under the 2018 Bank of America Credit Facility is due on the first day of each month, and the loans are due and payable in full on the termination date of the 2018 Bank of America Credit Facility, unless payment is required earlier. Voluntary prepayments are permitted without early repayment fees or penalties. Subject to customary exceptions, the 2018 Bank of America Credit Facility is secured by substantially all of Super Micro Computer's assets. Upon conversion to the 5-year revolving credit facility Super Micro Computer's assets, and at the Company's option, Super Micro Computer B.V.'s assets will be used as collateral. Under the terms of the 2018 Bank of America Credit Facility, the Company cannot pay any dividends.

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

On January 31, 2019, the Company paid a fee and entered into an amendment of the 2018 Bank of America Credit Facility that resulted in the extension of the maturity date of the 2018 Bank of America Credit Facility from April 19, 2019 to June 30, 2019.

CTBC Bank

In April 2016, the Company entered into a credit agreement with CTBC Bank Co., Ltd ("CTBC Bank") that provides for (i) a 12-month NTD\$700.0 million or \$21.6 million U.S. dollar equivalent term loan facility secured by the land and building located in Bade, Taiwan with an interest rate equal to the lender's established NTD interest rate plus 0.25% per annum which was adjusted monthly, which term loan facility also included a 12-month line of guarantee up to NTD\$100.0 million or \$3.1 million U.S. dollar equivalent with an annual fee equal to 0.5% per annum, and (ii) a 12-month revolving line of credit up to 80.0% of eligible accounts receivable in an aggregate amount of up to \$40.0 million with an interest rate equal to the lender's established USD interest rate plus 0.30% per annum which was adjusted monthly (collectively, the "CTBC Credit Facility"). The total borrowings allowed under the CTBC Credit Facility was capped at \$40.0 million. The Company extended the CTBC Credit Facility to mature on May 31, 2017.

In May 2017, the Company renewed the credit agreement with respect to the CTBC Credit Facility, such that it provides for (i) a 12-month NTD\$700.0 million or \$23.0 million U.S. dollar equivalent term loan facility secured by the land and building located in Bade, Taiwan with an interest rate equal to the lender's established NTD interest rate plus 0.25% per annum which is adjusted monthly, which term loan facility also included a 12-month line of guarantee up to NTD\$100.0 million or \$3.3 million U.S. dollar equivalent with an annual fee equal to 0.5% per annum, and (ii) a 12-month revolving line of credit up to 80.0% of eligible accounts receivable in an aggregate amount of up to \$50.0 million with an interest rate equal to the lender's established USD interest rate plus an interest rate ranging from 0.40% to 0.45% per annum which is adjusted monthly. The total borrowings allowed under the CTBC Credit Facility were capped at \$50.0 million.

The total outstanding borrowings under the CTBC Credit Facility term loan were denominated in Taiwanese dollars and remeasured into U.S. dollars of \$19.7 million and \$20.4 million at June 30, 2017 and 2016, respectively. At June 30, 2017 and 2016, the total outstanding borrowings under the CTBC Credit Facility revolving line of credit was \$19.0 million and \$10.1 million, respectively, in U.S. dollars. The interest rate for these loans ranged from 0.93% and 2.00% at June 30, 2017 and 0.90% and 1.25% per annum at June 30, 2016. At June 30, 2017, the amount available for future borrowing under the CTBC Credit Facility was \$11.3 million. As of June 30, 2017, the net book value of land and building located in Bade, Taiwan collateralizing the CTBC Credit Facility term loan was \$26.4 million. Under the terms of the May 2017 renewed credit agreement, the CTBC Credit Facility was to mature on April 30, 2018 but prior to the maturity the Company entered into a new credit agreement with CTBC Bank in January 2018.

In January 2018, the Company entered into a credit agreement with CTBC Bank that provides for (i) a 12-month NTD\$700.0 million or \$23.6 million U.S. dollar equivalent term loan facility secured by the land and building located in Bade, Taiwan with an interest rate equal to the lender's established NTD interest rate plus 0.25% per annum which is adjusted monthly, which term loan facility also includes a 12-month line of guarantee up to NTD\$100.0 million or \$3.4 million U.S. dollar equivalent with an annual fee equal to 0.5% per annum, and (ii) a 12-month NTD\$1,500.0 million or \$50.5 million U.S. dollar equivalent term loan facility with an interest rate equal to the lender's established NTD interest rate plus 0.25% per annum which is adjusted monthly (collectively, the "2018 CTBC Credit Facility"). The 2018 CTBC Credit Facility replaced the CTBC Credit Facility. The total borrowings allowed under the 2018 CTBC Credit Facility was initially capped at \$50.0 million and in August 2018 was reduced to \$40.0 million. In April 2019, the Company extended the maturity of 2018 CTBC Credit Facility to June 30, 2019.

Covenant Compliance

2016 Bank of America Credit Facility

The credit agreement with respect to the 2016 Bank of America Credit Facility contained customary representations and warranties and customary affirmative and negative covenants applicable to the Company and its subsidiaries. The credit agreement contained certain financial covenants, including the following:

- Not to incur on a consolidated basis, a net loss before taxes and extraordinary items for any two consecutive fiscal quarters;

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

- The Consolidated Leverage Ratio, as defined in the agreement, as of the end of any fiscal quarter, measured for the most recently completed twelve (12) months of the Company, shall not be greater than 2.00; and
- The domestic unencumbered liquid assets, as defined in the agreement, maintained in accounts within the United States shall have an aggregate market value of not less than \$40.0 million, measured quarterly as of the last day of each fiscal quarter.

As of June 30, 2017, the Company was in compliance with the above stated financial covenants associated with the term loan and lines of credit with Bank of America under the credit agreement.

On October 28, 2017, Bank of America issued an extension letter to the Company that extended the date by which the Company was obligated to deliver its audited consolidated financial statements and compliance certificate for the fiscal year ended June 30, 2017 from October 28, 2017 to January 15, 2018. On January 12, 2018, Bank of America issued another extension letter to the Company that extended the date by which the Company was obligated to deliver (i) its audited consolidated financial statements and compliance certificate for the fiscal year ended June 30, 2017 from January 15, 2018 to March 13, 2018 and (ii) its unaudited condensed consolidated financial statements and compliance certificate for the fiscal quarters ended September 30, 2017 and December 31, 2017 to March 13, 2018.

On March 12, 2018, the Company entered into an amendment of the credit agreement with respect to the 2016 Bank of America Credit Facility to, among other matters, add provisions requiring (i) a new financing commitment by March 30, 2018 to repay all obligations under the 2016 Bank of America Credit Agreement, (ii) repayment of the obligations under the 2016 Bank of America Credit Agreement no later than April 20, 2018, and (iii) delivery of cash flow forecasts. In addition, the amendment suspended the requirement that the Company deliver certain financial statements and SEC filings, provided that no event of default had occurred. In April 2018, the 2016 Bank of America Credit Facility was replaced by the 2018 Bank of America Credit Facility.

2018 Bank of America Credit Facility

The credit agreement with Bank of America related to the 2018 Bank of America Credit Facility contains customary representations and warranties and customary affirmative and negative covenants applicable to the Company and its subsidiaries. The credit agreement contains a financial covenant, which requires that the Company maintain a Fixed Charge Coverage Ratio, as defined in the agreement of at least 1.00 for each twelve-month period while a Trigger Period, as defined in the agreement, is in effect.

On September 7, 2018, Bank of America issued an extension letter to the Company in connection with the 2018 Bank of America Credit Facility, which extended the delivery date of the Company's audited consolidated financial statements, compliance certificates and other material reports for the fiscal year ended June 30, 2018 to January 31, 2019. On January 31, 2019, the Company entered into an amendment of the loan and security agreement with respect to the 2018 Bank of America Credit Facility to, among other matters, (a) extend the delivery date of the Company's audited consolidated financial statements, compliance certificates and other material reports for the fiscal year ended June 30, 2018 to June 30, 2019, and (b) require the delivery, by no later than March 31, 2019 of the Company's audited consolidated financial statements for the fiscal year ended June 30, 2017. In April 2019, the Company paid a fee to extend the delivery of its audited consolidated financial statements for the fiscal year ended June 30, 2017 to June 30, 2019. The Company intends to negotiate the further extension for delivery of the Company's audited consolidated financial statements, compliance certificates and other material reports for the fiscal year ended June 30, 2018.

CTBC Bank

There are no financial covenants associated with the CTBC Credit Facility or the 2018 CTBC Credit Facility.

Note 10. Other Long-term Liabilities

Other long-term liabilities as of June 30, 2017 and 2016 consisted of the following (in thousands):

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

	June 30,	
	2017	2016
Deferred revenue, non-current (1)	\$ 47,548	\$ 26,538
Accrued unrecognized tax benefits including related interest and penalties, non-current	13,285	16,056
Accrued warranty, non-current	1,745	1,313
Others (2)	6,176	1,293
Total other long-term liabilities	\$ 68,754	\$ 45,200

(1) Deferred revenue, non-current as of June 30, 2017 and 2016 was comprised of deferred extended warranty revenue of \$22.3 million and \$16.7 million, respectively, deferred on-site service revenue of \$23.4 million and \$8.6 million, respectively, and other deferred revenue of \$1.8 million and \$1.2 million, respectively.

(2) Included in others as of June 30, 2017 is \$4.9 million of deferred gain related to investment in Corporate Venture.

Note 11. Related Party Transactions

The Company has a variety of business relationships with Ablecom and Compuware. Ablecom and Compuware are both Taiwan corporations. Ablecom is one of the Company's major contract manufacturers; Compuware is both a distributor of the Company's products and a contract manufacturer for the Company. Ablecom's Chief Executive Officer, Steve Liang, is the brother of Charles Liang, the Company's President, Chief Executive Officer and Chairman of the Board of Directors. As of June 30, 2017, Ablecom owned approximately 0.4% of the Company's common stock. As of June 30, 2017, Charles Liang and his spouse, Sara Liu, who is also an officer and director of the Company, together owned approximately 10.5% of Ablecom's capital stock. Certain family members of Yih-Shyan (Wally) Liaw, who until January 2018 was the Senior Vice President of International Sales and a director of the Company, owned approximately 11.7% of Ablecom's capital stock as of June 30, 2017. The Company does not own, nor has it ever owned, any of Ablecom's capital stock. Steve Liang and other Liang family members, including other brothers of Charles Liang, own approximately 36.0% of Ablecom's stock. Bill Liang, a brother of both Charles Liang and Steve Liang, also is a member of the Board of Directors of Ablecom.

Bill Liang is also the Chief Executive Officer of Compuware, a member of Compuware's Board of Directors and a holder of a significant equity interest in Compuware. Steve Liang is also a member of Compuware's Board of Directors and is an equity holder of Compuware. None of the Company, Charles Liang or Sara Liu own any capital stock of Compuware.

Dealings with Ablecom

The Company has entered into a series of agreements with Ablecom, including multiple product development, production and service agreements, product manufacturing agreements, manufacturing services agreements and lease agreements for warehouse space.

Under these agreements, the Company outsources to Ablecom a portion of its design activities and a significant part of its manufacturing of components, particularly server chassis. Ablecom manufactured approximately 95% and 96% of the chassis included in the products sold by the Company during fiscal years 2017 and 2016, respectively. With respect to design activities, Ablecom generally agrees to design certain agreed-upon products according to the Company's specifications, and further agrees to build the tools needed to manufacture the products. The Company pays Ablecom for the design and engineering services, and further agrees to pay Ablecom for the tooling. The Company retains full ownership of any intellectual property resulting from the design of these products and tooling.

With respect to the manufacturing aspects of the relationship, Ablecom purchases most of materials needed to manufacture the chassis from outside markets and the Company provides certain components used in the manufacturing process (such as power supplies) to Ablecom through consignment or sales transactions. Ablecom uses these materials and components to manufacture the completed chassis and then sell them back to the Company. For the components purchased from the Company, Ablecom sells the components back to the Company at a price equal to the price at which the Company sold the components to Ablecom. The Company and Ablecom frequently review and negotiate the prices of the chassis the Company purchases from Ablecom. In addition to inventory purchases, the Company also incurs other costs associated with design services, tooling and other miscellaneous costs from Ablecom.

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company's exposure to financial loss as a result of its involvement with Ablecom is limited to potential losses on its purchase orders in the event of an unforeseen decline in the market price and/or demand of the Company's products such that the Company incurs a loss on the sale or cannot sell the products. Outstanding purchase orders from the Company to Ablecom were \$23.5 million and \$22.8 million at June 30, 2017 and 2016, respectively, representing the maximum exposure to financial loss. The Company does not directly or indirectly guarantee any obligations of Ablecom, or any losses that the equity holders of Ablecom may suffer. Since Ablecom manufactures substantially all the chassis that the Company incorporates into its products, if Ablecom were to suddenly be unable to manufacture chassis for the Company, the Company's business could suffer if the Company is unable to quickly qualify substitute suppliers who can supply high-quality chassis to the Company in volume and at acceptable prices.

Dealings with Compuware

The Company has entered into a distribution agreement with Compuware, under which the Company appointed Compuware as a non-exclusive distributor of the Company's products in Taiwan, China and Australia. Compuware assumes the responsibility to install the Company's products at the site of the end customer, if required, and administers customer support in exchange for a discount from the Company's standard price for its purchases.

The Company also has entered into a series of agreements with Compuware, including a multiple product development, production and service agreements, product manufacturing agreements, and lease agreements for office space.

Under these agreements, the Company outsources to Compuware a portion of its design activities and a significant part of its manufacturing of components, particularly power supplies. With respect to design activities, Compuware generally agrees to design certain agreed-upon products according to the Company's specifications, and further agrees to build the tools needed to manufacture the products. The Company pays Compuware for the design and engineering services, and further agrees to pay Compuware for the tooling. The Company retains full ownership of any intellectual property resulting from the design of these products and tooling. With respect to the manufacturing aspects of the relationship, Compuware purchases most of materials needed to manufacture the power supplies from outside markets and uses these materials to manufacture the products and then sell those products to the Company. The Company and Compuware frequently review and negotiate the prices of the power supplies the Company purchases from Compuware.

Compuware also manufactures motherboards, backplanes and other components used on printed circuit boards for the Company. The Company sells to Compuware most of the components needed to manufacture the above products. Compuware uses the components to manufacture the products and then sells the products back to the Company at a purchase price equal to the price at which the Company sold the components to Compuware, plus a "manufacturing value added" fee and other miscellaneous material charges and costs. The Company and Compuware frequently review and negotiate the amount of the "manufacturing value added" fee that will be included in the price of the products the Company purchases from Compuware. In addition to the inventory purchases, the Company also incurs costs associated with design services, tooling assets, and miscellaneous costs.

The Company's exposure to financial loss as a result of its involvement with Compuware is limited to potential losses on its purchase orders in the event of an unforeseen decline in the market price and/or demand of the Company's products such that the Company incurs a loss on the sale or cannot sell the products. Outstanding purchase orders from the Company to Compuware were \$56.4 million and \$40.0 million at June 30, 2017 and 2016, respectively, representing the maximum exposure to financial loss. The Company does not directly or indirectly guarantee any obligations of Compuware, or any losses that the equity holders of Compuware may suffer.

The Company's results from transactions with Ablecom and Compuware for each of the fiscal years ended June 30, 2017, 2016, and 2015 are as follows (in thousands):

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

	Years Ended June 30,		
	2017	2016	2015
Ablecom			
Net sales	\$ 7	\$ 57	\$ 60
Purchases (1)	123,734	125,537	127,967
Compuware			
Net sales	22,959	29,053	47,624
Purchases (1)	118,912	126,051	105,362

(1) Includes principally purchases of inventory and other miscellaneous items.

The Company had the following balances related to transactions with Ablecom and Compuware as of June 30, 2017 and 2016 (in thousands):

	June 30,	
	2017	2016
Ablecom		
Accounts receivable and other receivables	\$ 5,556	\$ 6,017
Accounts payable and accrued liabilities	30,762	29,788
Compuware		
Accounts receivable and other receivables	7,908	3,654
Accounts payable and accrued liabilities	32,216	20,507

In October 2016, the Company entered into agreements pursuant to which the Company contributed certain technology rights in connection with an investment in the Corporate Venture, which is accounted for using the equity method. See Note 7, "Investment in a Corporate Venture" for a discussion of the investment and the transactions that took place during the fiscal year 2017.

Note 12. Stock-based Compensation and Stockholders' Equity

Share Repurchase Program

In July 2016, the Company's Board of Directors adopted a program to repurchase from time to time at management's discretion up to \$100.0 million of the Company's common stock in the open market or in private transactions during the following twelve months at prevailing market prices. In fiscal year 2017, the Company purchased 888,097 shares of the Company's common stock in the open market at a weighted average price of \$20.79 for \$18.5 million. Repurchases were made under the program using the Company's cash resources. The repurchase program ended in July 2017.

Equity Incentive Plan

In January 2016, the Board of Directors approved the 2016 Equity Incentive Plan (the "2016 Plan") and reserved for issuance 4,700,000 shares of common stock for awards of stock options, stock appreciation rights, restricted stock, RSUs and other equity-based awards. The 2016 Plan was approved by the stockholders of the Company and became effective on March 8, 2016. As of the date the 2016 Plan became effective, 8,696,444 shares of common stock were reserved for outstanding awards under the Company's 2006 Equity Incentive Plan (the "2006 Plan"). Such awards remained outstanding under the 2006 Plan following the adoption of the 2016 Plan, although no further awards will be granted under the 2006 Plan. Up to 2,800,000 shares subject to awards that remained outstanding under the 2006 Plan but that are forfeited in the future will become available for use under the 2016 Plan. In addition, 1,153,412 shares of common stock originally reserved for issuance under the 2006 Plan were cancelled upon the adoption of the 2016 Plan. Under the 2016 Plan, the exercise price per share for incentive stock options granted to employees owning shares representing more than 10% of the Company at the time of grant cannot be less than 110% of the fair value of the underlying share on grant date. Nonqualified stock options and incentive stock options granted to all other persons shall be granted at a price not less than 100% of the fair value. Options generally expire ten years

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

after the date of grant. Stock options and RSUs generally vest over four years; 25% at the end of one year and one sixteenth per quarter thereafter. As of June 30, 2017, the Company had 2,785,792 authorized shares available for future issuance under the 2016 Plan.

Determining Fair Value

The Company's fair value of RSUs is based on the closing market price of the Company's common stock on the date of grant. The Company estimates the fair value of stock options granted using the Black-Scholes-option-pricing formula and a single option award approach. This fair value is then amortized ratably over the requisite service periods of the awards, which is generally the vesting period.

Expected Term—The Company's expected term represents the period that the Company's stock-based awards are expected to be outstanding and was determined based on a combination of the Company's peer group and the Company's historical experience.

Expected Volatility—Expected volatility is based on a combination of the Company's implied and historical volatility.

Expected Dividend—The Black-Scholes valuation model calls for a single expected dividend yield as an input and the Company has no plans to pay dividends.

Risk-Free Interest Rate—The risk-free interest rate used in the Black-Scholes valuation method is based on the United States Treasury zero coupon issues in effect at the time of grant for periods corresponding with the expected term of option.

The fair value of stock option grants for the fiscal years ended June 30, 2017, 2016 and 2015 was estimated on the date of grant using the Black-Scholes option pricing model with the following assumptions:

	Years Ended June 30,		
	2017	2016	2015
Risk-free interest rate	1.12% - 2.03%	1.37% - 1.57%	1.35% - 1.76%
Expected term	5.31 - 5.38 years	5.31 - 5.33 years	5.40 - 5.44 years
Dividend yield	—%	—%	—%
Volatility	43.36% - 49.64%	46.65% - 50.89%	46.93% - 49.31%
Weighted-average fair value	\$ 10.71	\$ 12.07	\$ 12.72

The following table shows total stock-based compensation expense included in the consolidated statements of operations for the fiscal years ended June 30, 2017, 2016 and 2015 (in thousands):

	Years Ended June 30,		
	2017	2016	2015
Cost of sales	\$ 1,382	\$ 1,157	\$ 962
Research and development	12,559	10,651	9,195
Sales and marketing	2,144	1,934	1,601
General and administrative	3,580	3,188	2,678
Stock-based compensation expense before taxes	19,665	16,930	14,436
Income tax impact	(5,946)	(4,767)	(4,247)
Stock-based compensation expense, net	\$ 13,719	\$ 12,163	\$ 10,189

The cash flows resulting from the tax benefits for tax deductions resulting from the exercise of stock options and vesting of RSUs in excess of the compensation expense recorded for those options (excess tax benefits) issued or modified since July 1, 2006 are classified as cash from financing activities. Excess tax benefits for stock options issued prior to July 1, 2006 are classified as cash from operating activities. The Company had \$1.8 million, \$3.6 million and \$11.3 million of excess

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

tax benefits recorded in additional paid-in capital in the fiscal years ended June 30, 2017, 2016 and 2015, respectively. The Company had excess tax benefits classified as cash from financing activities of \$2.3 million, \$2.8 million and \$8.0 million in the fiscal years ended June 30, 2017, 2016 and 2015, respectively, for options issued since July 1, 2006.

As of June 30, 2017, \$9.8 million of unrecognized compensation cost related to stock options is expected to be recognized over a weighted-average period of 2.21 years and \$27.2 million of unrecognized compensation cost related to unvested RSUs is expected to be recognized over a weighted-average period of 2.72 years.

Stock Option Activity

The following table summarizes stock option activity during the fiscal years ended June 30, 2017, 2016 and 2015 under all plans:

	Options Outstanding	Weighted Average Exercise Price per Share	Weighted Average Remaining Contractual Term (in Years)	Aggregate Intrinsic Value (in thousands)
Balance as of June 30, 2014 (7,558,631 shares exercisable at weighted average exercise price of \$11.05 per share)	10,905,602	\$ 12.24		
Granted (weighted average fair value of \$12.72)	1,093,920	28.28		
Exercised	(2,124,401)	10.99		
Forfeited	(172,278)	18.68		
Balance as of June 30, 2015 (7,208,475 shares exercisable at weighted average exercise price of \$12.24 per share)	9,702,843	14.21		
Granted (weighted average fair value of \$12.07)	316,580	26.86		
Exercised	(1,013,430)	12.03		
Forfeited	(45,126)	19.45		
Balance as of June 30, 2016 (7,495,131 shares exercisable at weighted average exercise price of \$13.35 per share)	8,960,867	14.88		
Granted (weighted average fair value of \$10.71)	473,000	24.27		
Exercised	(1,007,065)	10.80		
Forfeited	(51,143)	17.96		
Balance as of June 30, 2017 (7,348,320 shares exercisable at weighted average exercise price of \$14.58 per share)	8,375,659	\$ 15.88	4.37	\$ 78,501
Options vested and expected to vest at June 30, 2017	8,298,251	\$ 15.79	4.34	\$ 78,434
Options vested and exercisable at June 30, 2017	7,348,320	\$ 14.58	3.99	\$ 76,932

The total pretax intrinsic value of options exercised during the fiscal years ended June 30, 2017, 2016 and 2015 was \$14.0 million, \$18.0 million and \$48.1 million, respectively. Additional information regarding options outstanding as of June 30, 2017, is as follows:

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Range of Exercise Prices	Options Outstanding			Options Vested and Exercisable		
	Number Outstanding	Weighted-Average Remaining Contractual Term (Years)	Weighted-Average Exercise Price Per Share	Number Exercisable	Weighted-Average Exercise Price Per Share	
\$4.63 - 8.36	1,109,538	1.65	\$ 6.92	1,109,538	\$ 6.92	
8.47 - 10.66	1,435,967	2.98	10.18	1,435,967	10.18	
10.68 - 12.68	837,728	3.95	11.80	837,728	11.80	
12.92 - 14.23	1,089,103	4.26	13.75	1,058,336	13.74	
15.22 - 17.29	883,555	4.24	16.34	883,555	16.34	
17.69 - 18.93	1,055,904	5.15	18.55	947,204	18.55	
20.54 - 25.44	1,065,708	6.51	23.48	587,336	23.29	
26.60 - 35.07	827,496	7.20	29.16	441,261	29.30	
37.06	35,160	5.62	37.06	19,770	37.06	
39.19	35,500	7.62	39.19	27,625	39.19	
\$4.63 - \$39.19	<u>8,375,659</u>	4.37	\$ 15.88	<u>7,348,320</u>	\$ 14.58	

RSU Activity

In January 2015, the Company began to grant RSUs to employees. The Company grants RSUs to certain employees as part of its regular employee equity compensation review program as well as to selected new hires. RSUs are share awards that entitle the holder to receive freely tradable shares of the Company's common stock upon vesting. The following table summarizes restricted stock unit activity during the fiscal years ended June 30, 2017 and 2016 under all plans:

	RSUs Outstanding	Weighted Average Grant-Date Fair Value per Share	Aggregate Intrinsic Value (in thousands)
Balance as of June 30, 2014	—	\$ —	
Granted	374,720	35.82	
Released	(14,685)	35.23	
Forfeited	(56,711)	34.90	
Balance as of June 30, 2015	<u>303,324</u>	36.02	
Granted	845,870	28.45	
Released	(177,707)	31.80	
Forfeited	(44,504)	29.72	
Balance as of June 30, 2016	<u>926,983</u>	30.23	
Granted	808,020	23.73	
Released	(411,739)	27.41	
Forfeited	(96,907)	26.40	
Balance as of June 30, 2017	<u>1,226,357</u>	\$ 26.11	\$ 30,230

The total pretax intrinsic value of RSUs vested was \$11.3 million, \$4.9 million and \$0.5 million for the fiscal years ended June 30, 2017, 2016 and 2015, respectively. In fiscal years 2017, 2016 and 2015, upon vesting, 411,739, 177,707 and 14,685 shares of RSUs were partially net share-settled such that the Company withheld 144,994, 65,164 and 5,278 shares, respectively, with value equivalent to the employees' minimum statutory obligation for the applicable income and other employment taxes, and remitted the cash to the appropriate taxing authorities. The total shares withheld were based on the value of the RSUs on their respective vesting dates as determined by the Company's closing stock price. Total payments for the employees' tax obligations to taxing authorities were \$3.6 million, \$1.8 million and \$0.2 million for the fiscal years ended June 30, 2017, 2016 and 2015, respectively, and are reflected as a financing activity within the consolidated statements of cash

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

flows. These net-share settlements had the effect of share repurchases by the Company as they reduced and retired the number of shares that would have otherwise been issued as a result of the vesting and did not represent an expense to the Company. Pursuant to the terms of the 2016 Plan, shares withheld in connection with net-share settlements are returned to the 2016 Plan and are available for future grants under the 2016 Plan.

Note 13. Income Taxes

The components of income before income tax provision for the fiscal years ended June 30, 2017, 2016 and 2015 are as follows (in thousands):

	Years Ended June 30,		
	2017	2016	2015
United States	\$ 82,078	\$ 97,921	\$ 108,437
Foreign	9,210	9,483	24,200
Income before income tax provision	<u>\$ 91,288</u>	<u>\$ 107,404</u>	<u>\$ 132,637</u>

The income tax provision for the fiscal years ended June 30, 2017, 2016 and 2015, consists of the following (in thousands):

	Years Ended June 30,		
	2017	2016	2015
Current:			
Federal	\$ 26,033	\$ 29,647	\$ 33,765
State	695	638	(633)
Foreign	4,001	10,741	10,953
	<u>30,729</u>	<u>41,026</u>	<u>44,085</u>
Deferred:			
Federal	(6,782)	(5,976)	(5,492)
State	353	12	2,406
Foreign	134	261	(917)
	<u>(6,295)</u>	<u>(5,703)</u>	<u>(4,003)</u>
Income tax provision	<u>\$ 24,434</u>	<u>\$ 35,323</u>	<u>\$ 40,082</u>

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company's net deferred tax assets as of June 30, 2017 and 2016 consist of the following (in thousands):

	June 30,	
	2017	2016
Inventory valuation	\$ 15,240	\$ 12,329
Stock-based compensation	6,277	5,610
Deferred revenue	6,241	6,802
Payables to foreign subsidiaries	3,912	1,824
R&D credit	3,167	10
Accrued vacation and bonus	2,635	2,616
Warranty accrual	1,952	2,213
Foreign exchange unrealized gains and losses	1,884	710
Marketing fund accrual	1,605	1,791
Other	2,836	2,821
Total deferred income tax assets	45,749	36,726
Deferred tax liabilities-depreciation and other	(3,617)	(3,048)
Valuation allowance	(3,013)	—
Deferred income tax assets, net	\$ 39,119	\$ 33,678

The Company assesses its deferred tax assets for recoverability on a regular basis, and where applicable, a valuation allowance is recorded to reduce the total deferred tax asset to an amount that will, more likely than not, be realized in the future. As of June 30, 2017, the Company believes that most of its deferred tax assets are "more-likely-than not" to be realized with the exception of California R&D tax credits that have not met the "more-likely than not" realization threshold criteria. Starting from fiscal year 2016 California tax return which was filed in the fourth quarter of fiscal year 2017, on an annual basis and pursuant to current law, the Company generates more California credits than California tax. As a result, at June 30, 2017, the gross excess credits of \$4.6 million, or net of federal tax benefit of \$3.0 million, are subject to a full valuation allowance. The Company will continue to review its deferred tax assets in accordance with the applicable accounting standards. The net deferred tax assets balance as of June 30, 2017 and 2016 was \$39.1 million and \$33.7 million, respectively.

The cumulative undistributed earnings of the Company's foreign subsidiaries of \$40.6 million at June 30, 2017 are considered to be indefinitely reinvested and accordingly, no provisions for federal and state income taxes have been provided thereon. The Company determined that the calculation of the amount of unrecognized deferred tax liability related to these cumulative unremitted earnings was not practicable. Upon distribution of those earnings in the form of dividends or otherwise, the Company would be subject to both United States income taxes (subject to an adjustment for foreign tax credits) and withholding taxes payable to various foreign countries.

Subsequent to June 30, 2017, but before the issuance of the consolidated financial statements, the 2017 Tax Act was enacted on December 22, 2017. Some of the significant new requirements of the 2017 Tax Act include, but are not limited to, a one-time mandatory deemed repatriation transition tax on previously deferred foreign earnings which the Company estimates would not have a material impact to the consolidated financial statements in the year of enactment, a re-measurement of our deferred taxes due to the change in the corporate tax rate which the Company is estimating could have a \$11.0 million to \$15.0 million impact to the consolidated financial statements in the year of enactment, taxation of certain global intangible low-taxed income under the international tax provisions which the Company estimates would not have a material impact to the consolidated financial statements in the year of enactment, and limitations on the deductibility of performance-based compensation for officers which the Company estimates would not have a material impact to the consolidated financial statements in the year of enactment. The tax impacts of the 2017 Tax Act have not been included in the income tax provision for fiscal years ended June 30, 2017, 2016 and 2015. The Company will account for the tax effects of the 2017 Tax Act in the period it was enacted, which is in the fiscal year ended June 30, 2018.

Prior to the enactment of the 2017 Tax Act, the Company considered earnings from foreign operations to be indefinitely reinvested outside of the United States. The Company is currently evaluating whether to change its indefinite

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

reinvestment assertion in light of the 2017 Tax Act and the Company considers that assessment to be incomplete as the financial statements for fiscal year 2018 have not been finalized.

The following is a reconciliation for the fiscal years ended June 30, 2017, 2016 and 2015, of the statutory rate to the Company's effective federal tax rate:

	Years Ended June 30,		
	2017	2016	2015
Tax at statutory rate	35.0 %	35.0 %	35.0 %
State income tax, net of federal tax benefit	4.6	3.2	3.3
Stock-based compensation	2.5	2.3	2.6
Settlement with tax authority	2.0	—	—
Foreign withholding tax	1.1	3.2	3.3
Foreign tax rate differences	0.8	1.2	(2.7)
Subpart F income inclusion	—	(2.9)	(3.2)
Qualified production activity deduction	(3.0)	(2.8)	(1.4)
Uncertain tax positions	(7.6)	(1.6)	(0.8)
Research and development tax credit	(9.4)	(7.0)	(3.8)
Other	0.8	2.3	(2.1)
Effective tax rate	<u>26.8 %</u>	<u>32.9 %</u>	<u>30.2 %</u>

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

As of June 30, 2017, the Company had state research and development tax credit carryforwards of \$16.6 million. The state research and development tax credits will carryforward indefinitely to offset future state income taxes. \$6.7 million of the state research and development tax credit carryforwards were attributable to excess tax deductions from stock option exercises, and were not included in the deferred tax assets shown above. The benefit of these carryforwards will be credited to equity when realized.

The following table summarizes the activity related to the unrecognized tax benefits (in thousands):

	Gross* Unrecognized Income Tax Benefits
Balance at June 30, 2014	\$ 9,615
Gross increases:	
For current year's tax positions	3,855
For prior years' tax positions	793
Gross decreases:	
Settlements and releases due to the lapse of statutes of limitations	(971)
Balance at June 30, 2015	13,292
Gross increases:	
For current year's tax positions	6,167
For prior years' tax positions	2,074
Gross decreases:	
Settlements and releases due to the lapse of statutes of limitations	(2,138)
Balance at June 30, 2016	19,395
Gross increases:	
For current year's tax positions	5,732
For prior years' tax positions	1,119
Gross decreases:	
Settlements and releases due to the lapse of statutes of limitations	(7,029)
Balance at June 30, 2017	\$ 19,217

*excludes interest, penalties, federal benefit of state reserves

The total amount of unrecognized tax benefits that would affect the effective tax rate, if recognized, was \$15.6 million and \$16.7 million as of June 30, 2017 and 2016, respectively.

The Company's policy is to include interest and penalties related to unrecognized tax benefits within the provision for taxes in the consolidated statements of operations. As of June 30, 2017 and 2016, the Company had accrued \$1.0 million and \$1.0 million for the payment of interest and penalties relating to unrecognized tax benefits, respectively. During fiscal years 2017, 2016 and 2015, there was no material change in the total amount of the liability for accrued interest and penalties related to the unrecognized tax benefits.

The Company is subject to United States federal income tax as well as income taxes in many state and foreign jurisdictions. In the fourth quarter of fiscal year 2017, the U.S. Internal Revenue Service ("IRS") completed its examination procedures including all appeals and administrative review for tax years ended June 30, 2013 and 2014 U.S. federal income tax returns. The IRS proposed an adjustment on the Company's research and development credit claimed which resulted in additional tax liability of \$1.9 million. The Company accepted and paid for the amount in June 2017. The impact of this one-time adjustment on the income statement was mostly offset by the recognition of other previously unrecognized tax benefits related to the years audited.

In December 2018, the tax authorities completed their audit in Taiwan for fiscal year 2017, which was related to local income taxes in response to the Taiwan tax authority's proposed adjustment on the Company's transfer pricing that resulted in

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

additional tax liability of \$1.5 million. The Company accepted and paid the \$1.5 million in January 2019. The impact of this one-time adjustment on the income statement was predominantly offset by the recognition of previously unrecognized tax benefits related to the years audited.

The Company believes that it has adequately provided reserves for all uncertain tax positions, however, amounts asserted by tax authorities could be greater or less than the Company's current position. Accordingly, the Company's provision on federal, state and foreign tax related matters to be recorded in the future may change as revised estimates are made or the underlying matters are settled or otherwise resolved.

The federal statute of limitations remains open in general for tax years ended June 30, 2016 through 2018. The state statute of limitations remains open in general for tax years ended June 30, 2015 through 2018. The statutes of limitations in major foreign jurisdictions remain open for examination in general for tax years ended June 30, 2013 through 2018. The Company does not expect its unrecognized tax benefits to change materially over the next 12 months.

Note 14. Commitments and Contingencies

Litigation and Claims— In February 2018, the Company became a party to legal proceedings whereby complainants have alleged that it has violated Section 10(b) of the Securities Exchange Act due to alleged misrepresentations and/or omissions. See Note 18, "Subsequent Events" for further details. From time to time, the Company has been involved in various legal proceedings arising from the normal course of business activities. In management's opinion, the resolution of any matters will not have a material adverse effect on the Company's consolidated financial condition, results of operations or liquidity.

The Company has entered into indemnification agreements with its current and former directors and executive officers. Under these agreements, the Company has agreed to indemnify such individuals to the fullest extent permitted by law against liabilities that arise by reason of their status as directors or officers and to advance expenses incurred by such individuals in connection with related legal proceedings. It is not possible to determine the maximum potential amount of payments the Company could be required to make under these agreements due to the limited history of prior indemnification claims and the unique facts and circumstances involved in each claim. However, the Company maintains directors and officers liability insurance coverage to reduce its exposure to such obligations.

Purchase Commitments— The Company has agreements to purchase certain units of inventory and non-inventory items through the next 12 months. As of June 30, 2017, these remaining noncancelable commitments were \$309.1 million, including \$79.9 million for related parties.

Lease Commitments—The Company leases offices and equipment under noncancelable operating leases which expire at various dates through 2026. In addition, the Company leases certain of its equipment under capital leases. The future minimum lease commitments under all leases are as follows (in thousands):

Year ending:	Capital Leases	Operating Leases
June 30, 2018	\$ 309	\$ 4,844
June 30, 2019	271	4,399
June 30, 2020	162	4,106
June 30, 2021	101	2,033
June 30, 2022	39	1,572
Thereafter	—	3,951
Total minimum lease payments	882	\$ 20,905
Less: Amounts representing interest	70	
Present value of minimum lease payments	812	
Less: Long-term portion	539	
Current portion	\$ 273	

Rent expense for the fiscal years ended June 30, 2017, 2016 and 2015, was \$5.0 million, \$4.6 million and \$3.7 million, respectively.

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Note 15. Retirement Plans

The Company sponsors a 401(k) savings plan for eligible United States employees and their beneficiaries. Contributions by the Company are discretionary, and no contributions have been made by the Company for the fiscal years ended June 30, 2017, 2016 and 2015.

Beginning in March 2003, employees of Super Micro Computer, B.V. have the option to deduct a portion of their gross wages and invest the amount in a defined contribution plan. The Company has agreed to match 10% of the amount that is deducted monthly from employees' wages. Similar to contributions into a 401(k) plan, the Company's obligation is limited to the contributions made to the contribution plan. Investment risk and investment rewards are assumed by the employees and not by the Company. For the fiscal years ended June 30, 2017, 2016 and 2015, the Company's matching contribution was \$0.4 million, \$0.3 million and \$0.2 million, respectively.

The Company contributes to a defined contribution pension plan administered by the government of Taiwan that covers all eligible employees within Taiwan. Pension plan benefits are based primarily on participants' compensation and years of service credited as specified under the terms of Taiwan's plan. The funding policy is consistent with the local requirements of Taiwan. The Company's obligation is limited to the contributions made to the pension plan. The Company has no control over the investment strategy of the assets of the government administered pension plan. For the fiscal years ended June 30, 2017, 2016 and 2015, the Company's contribution was \$1.9 million, \$1.0 million and \$0.9 million, respectively.

Note 16. Segment Reporting

The Company operates in one operating segment that develops and provides high performance server solutions based upon an innovative, modular and open-standard architecture. The Company's chief operating decision maker is the Chief Executive Officer.

The following is a summary of property, plant and equipment (in thousands):

	June 30,	
	2017	2016
United States	\$ 152,310	\$ 142,764
Asia	40,854	42,052
Europe	2,412	3,133
	<u>\$ 195,576</u>	<u>\$ 187,949</u>

International net sales are based on the country and region to which the products were shipped. The following is a summary for the fiscal years ended June 30, 2017, 2016 and 2015, of net sales by geographic region (in thousands):

	Years Ended June 30,		
	2017	2016	2015
United States	\$ 1,422,667	\$ 1,409,601	\$ 1,148,135
Asia	500,956	319,581	313,550
Europe	453,798	387,711	367,538
Other	107,508	108,129	125,130
	<u>\$ 2,484,929</u>	<u>\$ 2,225,022</u>	<u>\$ 1,954,353</u>

The following is a summary of net sales by product type (in thousands):

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

	Years Ended June 30,					
	2017		2016		2015	
	Amount	Percent of Net Sales	Amount	Percent of Net Sales	Amount	Percent of Net Sales
Server systems	\$ 1,740,633	70.0%	\$ 1,533,382	68.9%	\$ 1,186,258	60.7%
Subsystems and accessories	744,296	30.0%	691,640	31.1%	768,095	39.3%
Total	\$ 2,484,929	100.0%	\$ 2,225,022	100.0%	\$ 1,954,353	100.0%

Subsystems and accessories are comprised of serverboards, chassis and accessories. Server systems constitute an assembly of subsystems and accessories, and related services.

Note 17. Quarterly Financial Information (Unaudited)

The following table presents the Company's unaudited consolidated quarterly financial data. This information has been prepared on a basis consistent with that of the audited consolidated financial statements. The Company believes that all necessary adjustments, consisting of normal recurring accruals and adjustments, have been included to present fairly the quarterly financial data. The Company's quarterly results of operations for these periods are not necessarily indicative of future results of operations.

	Three Months Ended							
	Sep. 30, 2015	Dec. 31, 2015	Mar. 31, 2016	Jun. 30, 2016 (1)	Sep. 30, 2016	Dec. 31, 2016	Mar. 31, 2017	Jun. 30, 2017
	(As Restated)							
	(In thousands, except per share data)							
Net sales	\$ 539,104	\$ 641,235	\$ 513,468	\$ 531,215	\$ 528,763	\$ 663,200	\$ 614,798	\$ 678,168
Gross profit	\$ 77,475	\$ 103,187	\$ 78,983	\$ 70,856	\$ 82,552	\$ 96,136	\$ 85,337	\$ 85,933
Net income	\$ 17,351	\$ 33,204	\$ 16,046	\$ 5,480	\$ 15,373	\$ 22,876	\$ 15,350	\$ 13,255
Net income per common share:								
Basic	\$ 0.37	\$ 0.70	\$ 0.33	\$ 0.10	\$ 0.32	\$ 0.48	\$ 0.32	\$ 0.26
Diluted	\$ 0.34	\$ 0.64	\$ 0.31	\$ 0.10	\$ 0.30	\$ 0.44	\$ 0.30	\$ 0.25

(1) The error corrections made in the three months ended June 30, 2016 are similar in nature to those discussed in Note 19, "Restatement of Previously Issued Consolidated Financial Statements." The correction of the errors resulted in net sales being increased by \$6.9 million, gross profit reduced by \$2.9 million and net income reduced by \$1.5 million, respectively, for the three months ended June 30, 2016, from amounts previously reported.

Note 18. Subsequent Events

In December 2017, the 2017 Tax Act was signed into law. The 2017 Tax Act reduces the U.S. federal corporate tax rate from 35% to 21% and imposes a one-time repatriation transition tax among other provisions. For details, see Note 13, "Income Taxes."

On February 8, 2018, two putative class action complaints were filed against the Company, its Chief Executive Officer, and former Chief Financial Officer in the U.S. District Court for the Northern District of California (*Hessefort v. Super Micro Computer, Inc., et al.*, No. 18-cv-00838 and *United Union of Roofers v. Super Micro Computer, Inc., et al.*, No. 18-cv-00850). The complaints claim that the defendants violated Section 10(b) of the Securities Exchange Act due to alleged misrepresentations and/or omissions in public statements regarding recognition of revenue. The court subsequently appointed New York Hotel Trades Council & Hotel Association of New York City, Inc. Pension Fund as lead plaintiff and it filed an amended complaint naming the Company's Senior Vice President of Investor Relations, as an additional defendant. The court

approved the parties' agreement to permit a further amendment of the complaint, which was filed on January 22, 2019. The Company believes the allegations filed are without merit, and intends to vigorously defend against the lawsuit.

In April 2018, the Company repaid and terminated the 2016 Bank of America Credit Facility with proceeds from the 2018 Bank of America Credit Facility. As a result, the Company's borrowing capacity increased from \$155.0 million to \$250.0 million. On January 31, 2019, the Company entered into an amendment of the loan and security agreement with respect to the 2018 Bank of America Credit Facility to, among other matters, extend the maturity date of this credit facility from April 19, 2019 to June 30, 2019. For details, see Note 9, "Short-term and Long-term Obligations."

Effective at the open of business on August 23, 2018, the Company's common stock was suspended from trading on the Nasdaq Global Select Market. Effective March 22, 2019, the Company's common stock was delisted from the Nasdaq Global Select Market. Since the date the Company's common stock was suspended from trading on the Nasdaq Global Select Market, its common stock has been quoted on the OTC Market and is currently traded under the symbol "SMCI."

Note 19. Restatement of Previously Issued Consolidated Financial Statements

In August 2017, prior to the issuance of the Company's consolidated financial statements for the fiscal year ended June 30, 2017, the audit committee (the "Audit Committee") of the Company's Board of Directors (the "Board") commenced an investigation (the "Investigation") into certain accounting and internal control matters at the Company, principally focused on certain revenue recognition matters. The Investigation was conducted with the assistance of outside counsel, which retained forensic accountants to assist them in their work. Following the conclusion of the Investigation, the Audit Committee directed its outside counsel and its forensic accountants to conduct additional procedures on an expanded scope of revenue recognition matters. Concurrent with these additional procedures, new members of the Company's management, under the direction of the Audit Committee, performed a thorough analysis of the Company's historical financial statements, accounting policies and financial reporting, as well as the Company's disclosure controls and procedures and its internal control over financial reporting. During the course of the Investigation, the further procedures by outside counsel and the management analysis (collectively, the "Investigation, Procedures and Analysis"), the Audit Committee and management determined certain employees had violated the Company's Code of Business Conduct and Ethics and discovered accounting and financial reporting errors and certain irregularities. On November 14, 2018, the Board, upon the recommendation, and with the concurrence of the Audit Committee and new members of management, concluded that certain previously filed consolidated financial statements and related financial information should no longer be relied upon.

As a result, within these consolidated financial statements, the Company has included the restated consolidated financial statements as of and for the years ended June 30, 2016 and June 30, 2015, which is referred to as the "Restatement". The Restatement corrects errors and certain irregularities which are discussed in detail within this footnote.

The errors and certain irregularities primarily related to the timing of recognition of (i) revenue, (ii) expenses related to certain inventory used for engineering and marketing purposes and (iii) expenses related to defective products under warranty not returned by customers. Additionally, errors were identified whereby the Company had derecognized inventory while control over such inventory was retained because the Company was obligated to buy it back.

Restatement

The following is a discussion of the restatement adjustments that were made to the Company's previously issued consolidated financial statements.

(a) Product revenue

During the fiscal years ended June 30, 2016 and 2015, product revenue was recognized prematurely. As a result of the information gathered in the Investigation, Procedures and Analysis, it was determined that there was an aggressive focus on quarterly revenue without sufficient focus on compliance by an appropriate number of competent resources, and all relevant information was not communicated among the Company's internal functions as well as the management to both the Audit Committee and the independent auditors that resulted in the inappropriate recording of revenue with insufficient documentation or rigorous assessment of revenue transactions. The Company found instances where (i) title and risk of loss had not transferred to the customer, (ii) persuasive evidence of an arrangement with the customer consistent with the Company's customary business practices was not present, (iii) the distributor's price was not fixed or determinable, or (iv) collectibility was not reasonably assured, all of which resulted in premature recognition of revenue.

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Also, during the fiscal years ended June 30, 2016 and 2015, revenue was misstated as it was determined from the information gathered in the Investigation, Procedures and Analysis there was a misapplication of accounting principles related to the classification of consideration paid to customers under the Company's cooperative marketing arrangements for which the Company did not receive an identifiable benefit.

To correct the errors and certain irregularities related to premature revenue recognition, the related revenue and cost of sales were reversed in the period in which the accounting errors took place and have been recognized in subsequent periods when all of the revenue recognition criteria were met. The correction of these errors resulted in net sales for 2016 being increased by \$8.8 million, and net sales for 2015 being decreased by \$21.5 million, and cost of sales for 2016 increased by \$11.1 million, and for 2015 decreased by \$21.7 million from amounts previously reported. Additionally, certain related adjustments to reverse accounts receivable, net, of \$60.6 million and to recognize inventories of \$48.7 million were made to amounts previously reported as of June 30, 2016. Additionally, certain related adjustments to accounts payable and accrued liabilities, which also impacted cost of sales and sales and marketing expense, were made to the consolidated financial statements in which the accounting errors and certain irregularities occurred.

The Company corrected errors related to consideration paid to customers under the Company's cooperative marketing arrangements for which the Company did not receive an identifiable benefit, as well as the value of free samples provided to customers. These transactions were incorrectly recorded as sales and marketing expense and have now been corrected and recorded as a reduction of revenue. The correction of these errors resulted in net sales and sales and marketing expense for 2016 and 2015 being reduced by \$3.6 million and \$2.5 million, respectively, from amounts previously reported.

(b) Services revenue

During the fiscal years ended June 30, 2016 and 2015, services revenue was misstated as it was determined that as a result of the information gathered in the Investigation, Procedures and Analysis there were errors related to inaccurate allocation of contract consideration for multiple element arrangements resulting from (a) lack of proper identification or accounting for contractual service obligations, (b) incorrect allocation of discounts to service related deliverables, and (c) lack of a robust process resulting in inaccurate determination of BESP. Additionally, there were misalignments of the revenue recognition period and the contractual requisite service period. Consequently, certain contracts for extended warranties on products or on-site services in multiple element arrangements were incorrectly recorded as revenue at the time of sale of the product instead of being deferred and amortized over the contractual warranty or service period. The Company had previously identified a portion of these errors in the amount of \$9.0 million related to extended warranty in a prior period and had adjusted the consolidated financial statements for the fiscal year ended June 30, 2016 for their cumulative effect with an out-of-period correction to revenues.

To correct these errors, the Company reversed the revenue and the out-of-period correction to revenues in the period in which the accounting errors or out-of-period adjustment took place, quantified an amount for these services by determining a best estimated selling price for these services based on a percentage of the separately priced product deliverables in the arrangement, and deferred and amortized the quantified amount of revenue over the contractual warranty or service period. Additionally, certain related adjustments to deferred revenues, which are included in accrued liabilities and other long-term liabilities, were made to the consolidated balance sheet at the end of the period in which the errors occurred. The correction of these errors resulted in net sales for 2016 being increased by \$3.9 million and net sales for 2015 being reduced by \$11.3 million, accrued liabilities being increased by \$9.3 million and other long-term liabilities being increased by \$4.6 million as of June 30, 2016 from amounts previously reported.

(c) Inventory

As of June 30, 2016 and 2015, inventories were overstated due to misapplication of accounting principles, whereby materials issued from inventory to research and development projects and marketing with no alternative use were included as inventory and expensed upon completion of a project rather than being expensed upon consumption.

Also as of June 30, 2016 and 2015, inventories were understated due to misapplication of accounting principles, whereby (i) inventory of materials transferred to certain contract manufacturers was improperly derecognized upon transfer that the Company retained control over the materials because it was obligated to buy them back; and (ii) in-transit inventory was not being recorded in the appropriate period due to improper cut-off procedures.

To correct the errors related to inventory overstatement, the Company has recorded the materials as a research and development expense, or a marketing expense, in the period that inventory was consumed. The correction of the overstatement errors resulted in a \$2.1 million decrease in inventories as of June 30, 2016 from amounts previously reported.

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

To correct the errors related to inventory understatement, the Company has adjusted the carrying value of inventory in the periods in which the errors took place. The correction of these understatement errors resulted in a \$20.8 million increase in inventories, as well as \$16.1 million increase in accrued liabilities as of June 30, 2016 from amounts previously reported. Additionally, certain related adjustments to cost of sales, inventories, accounts payable and accrued liabilities were made to the consolidated financial statements in the period in which the errors occurred.

(d) Other

The Company corrected the following errors impacting the consolidated financial statements:

- The Company did not correctly record receivables from suppliers as prepaid expenses and other current assets. The correction of this error resulted in a \$56.3 million decrease in accounts receivable, net, a \$63.6 million increase in prepaid expenses and other current assets, and an increase to accounts payable of \$7.3 million as of June 30, 2016 from amounts previously reported.
- The Company did not record the payments for certain payroll tax related liabilities, as well as did not accrue certain withholding tax liabilities, in the appropriate periods. The correction of the error resulted in a \$2.1 million decrease in cash and cash equivalents, and a corresponding decrease in accrued liabilities as of June 30, 2016 from amounts previously reported.

The Company corrected other immaterial misstatements relating to (i) sales taxes, (ii) stock-based compensation expense, (iii) accounts receivable and related allowances, (iv) other assets, (v) accounts payable, and (vi) prepaid expenses and other current assets.

Additionally, the Company changed the presentation of foreign exchange gains and losses of \$1.5 million and \$0.7 million for 2016 and 2015, respectively, from general and administrative expenses, as previously reported, to other income (expense), net in the consolidated statement of operations.

(e) Income taxes

The Company has recorded tax adjustments to reflect the impacts of the Restatement and other income tax related error corrections.

Impact on Consolidated Statements of Operations

The effect of the Restatement described above on the accompanying consolidated statements of operations for the fiscal years ended June 30, 2016 and 2015 is as follows (in thousands, except per share amounts):

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

For the Year Ended June 30, 2016

	As Previously Reported	Product Revenue	Services Revenue	Inventories	Other	Income Taxes	As Restated
Net sales (1)	\$ 2,215,573	\$ 5,582	\$ 3,867	\$ —	\$ —	\$ —	\$ 2,225,022
Cost of sales (1)	1,884,048	11,410	—	(926)	(11)	—	1,894,521
Gross profit	331,525	(5,828)	3,867	926	11	—	330,501
Operating expenses:							
Research and development	123,994	—	—	(367)	596	—	124,223
Sales and marketing	62,841	(4,255)	—	(364)	116	—	58,338
General and administrative	37,840	—	—	—	2,609	—	40,449
Total operating expenses	224,675	(4,255)	—	(731)	3,321	—	223,010
Income from operations	106,850	(1,573)	3,867	1,657	(3,310)	—	107,491
Other income (expense), net	171	—	—	—	1,336	—	1,507
Interest expense	(1,594)	—	—	—	—	—	(1,594)
Income before income tax provision	105,427	(1,573)	3,867	1,657	(1,974)	—	107,404
Income tax provision	33,406	—	—	—	—	1,917	35,323
Net income	\$ 72,021	\$ (1,573)	\$ 3,867	\$ 1,657	\$ (1,974)	\$ (1,917)	\$ 72,081
Net income per common share:							
Basic	\$ 1.50						\$ 1.50
Diluted	\$ 1.39						\$ 1.39
Weighted-average shares used in calculation of net income per common share:							
Basic	47,917						47,917
Diluted	51,836						51,836

(1) Transactions with related parties are included in the line items above as follows:

	Year Ended June 30,		
	2016		
	As Previously Reported	Adjustments	2016 As Restated
Net sales	\$ 19,453	\$ 9,657	\$ 29,110
Cost of sales*	241,836	802	242,638

* Represents purchases from related parties.

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

For the Year Ended June 30, 2015

	As Previously Reported	Product Revenue	Services Revenue	Inventories	Other	Income Taxes	As Restated
Net sales (1)	\$ 1,991,155	\$ (25,542)	\$ (11,260)	\$ —	\$ —	\$ —	\$ 1,954,353
Cost of sales (1)	1,670,924	(23,229)	—	(13)	87	—	1,647,769
Gross profit	320,231	(2,313)	(11,260)	13	(87)	—	306,584
Operating expenses:							
Research and development	100,257	—	—	501	644	—	101,402
Sales and marketing	48,851	(1,814)	—	386	73	—	47,496
General and administrative	24,377	—	—	—	663	—	25,040
Total operating expenses	173,485	(1,814)	—	887	1,380	—	173,938
Income from operations	146,746	(499)	(11,260)	(874)	(1,467)	—	132,646
Other income (expense), net	115	—	—	—	841	—	956
Interest expense	(965)	—	—	—	—	—	(965)
Income before income tax provision	145,896	(499)	(11,260)	(874)	(626)	—	132,637
Income tax provision	44,033	—	—	—	—	(3,951)	40,082
Net income	\$ 101,863	\$ (499)	\$ (11,260)	\$ (874)	\$ (626)	\$ 3,951	\$ 92,555
Net income per common share:							
Basic	\$ 2.19						\$ 1.99
Diluted	\$ 2.03						\$ 1.85
Weighted-average shares used in calculation of net income per common share:							
Basic	46,434						46,434
Diluted	50,094						50,094

(1) Transactions with related parties are included in the line items above as follows:

	Year Ended June 30,		
	2015		2015
	As Previously Reported	Adjustments	As Restated
Net sales	\$ 58,013	\$ (10,329)	\$ 47,684
Cost of sales*	227,562	99	227,661

* Represents purchases from related parties.

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Impact on Consolidated Balance Sheet

The effect of the Restatement described above on the accompanying consolidated balance sheet as of June 30, 2016 is as follows (in thousands):

	As of June 30, 2016						
	As Previously Reported	Product Revenue	Services Revenue	Inventories	Other	Income Taxes	As Restated
ASSETS							
Current assets:							
Cash and cash equivalents	\$ 180,964	\$ —	\$ —	\$ —	\$ (2,144)	\$ —	\$ 178,820
Accounts receivable, net (1)*	288,941	(60,590)	—	—	(53,418)	—	174,933
Inventories	448,980	48,714	—	18,205	908	—	516,807
Prepaid income taxes	5,682	—	—	—	—	(1,341)	4,341
Prepaid expenses and other current assets (1)	13,435	—	—	—	65,992	—	79,427
Total current assets	938,002	(11,876)	—	18,205	11,338	(1,341)	954,328
Long-term investments	2,643	—	—	—	—	—	2,643
Property, plant, and equipment, net	187,949	—	—	—	—	—	187,949
Deferred income taxes, net	28,460	—	—	—	—	5,218	33,678
Other assets	8,546	—	—	—	4,339	—	12,885
Total assets	<u>\$ 1,165,600</u>	<u>\$ (11,876)</u>	<u>\$ —</u>	<u>\$ 18,205</u>	<u>\$ 15,677</u>	<u>\$ 3,877</u>	<u>\$ 1,191,483</u>
Liabilities and Stockholders' Equity							
Current liabilities:							
Accounts payable (1)	\$ 249,239	\$ 5	\$ —	\$ 2,981	\$ 15,166	\$ —	\$ 267,391
Accrued liabilities (1)	55,618	(128)	9,313	16,251	2,542	—	83,596
Income taxes payable	5,172	—	—	—	—	(118)	5,054
Short-term debt and current portion of long-term debt	53,589	—	—	—	—	—	53,589
Total current liabilities	363,618	(123)	9,313	19,232	17,708	(118)	409,630
Long-term debt	40,000	—	—	—	—	—	40,000
Other long-term liabilities	40,603	—	4,597	—	—	—	45,200
Total liabilities	444,221	(123)	13,910	19,232	17,708	(118)	494,830
Stockholders' equity:							
Common stock and additional paid-in capital	277,339	—	—	—	2,067	59	279,465
Treasury stock	(2,030)	—	—	—	—	—	(2,030)
Accumulated other comprehensive loss	(85)	—	—	—	—	—	(85)
Retained earnings	445,971	(11,753)	(13,910)	(1,027)	(4,098)	3,936	419,119
Total Super Micro Computer, Inc. stockholders' equity	721,195	(11,753)	(13,910)	(1,027)	(2,031)	3,995	696,469
Noncontrolling interest	184	—	—	—	—	—	184
Total stockholders' equity	721,379	(11,753)	(13,910)	(1,027)	(2,031)	3,995	696,653
Total liabilities and stockholders' equity	<u>\$ 1,165,600</u>	<u>\$ (11,876)</u>	<u>\$ —</u>	<u>\$ 18,205</u>	<u>\$ 15,677</u>	<u>\$ 3,877</u>	<u>\$ 1,191,483</u>

* Previously reported allowances for accounts receivable as of June 30, 2016 were \$2,721, now corrected and restated to \$2,413.

(1) Transactions with related parties are included in the line items above as follows:

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

	As of June 30, 2016		
	As Reported	Adjustments	As Restated
Accounts receivable, net	\$ 4,678	\$ (4,629)	\$ 49
Prepaid expenses and other current assets	—	9,622	9,622
Accounts payable	39,152	5,789	44,941
Accrued liabilities	—	5,354	5,354

Cumulative Effect of Prior Period Adjustments

The following table presents the impact of the Restatement on the beginning stockholders' equity as of June 30, 2014 (in thousands):

	Common Stock and Additional Paid-in Capital	Treasury Stock	Accumulated Other Comprehensive Loss	Retained Earnings	Total Super Micro Computer Stockholders' Equity	Non- controlling interest	Total Stockholders' Equity
Balance, June 30, 2014 (As previously reported)	\$ 199,062	\$ (2,030)	\$ (63)	\$ 272,087	\$ 469,056	\$ 175	\$ 469,231
Adjustments:							
Product revenue recognition	—	—	—	(9,681)	(9,681)	—	(9,681)
Service revenue	—	—	—	(6,518)	(6,518)	—	(6,518)
Inventory	—	—	—	(1,809)	(1,809)	—	(1,809)
Other	531	—	—	(1,498)	(967)	—	(967)
Restatement tax impacts	—	—	—	1,902	1,902	—	1,902
Cumulative restatement adjustments	531	—	—	(17,604)	(17,073)	—	(17,073)
Balance, June 30, 2014 (As Restated)	<u>\$ 199,593</u>	<u>\$ (2,030)</u>	<u>\$ (63)</u>	<u>\$ 254,483</u>	<u>\$ 451,983</u>	<u>\$ 175</u>	<u>\$ 452,158</u>

Other changes to the consolidated statements of stockholders' equity for the years ended June 30, 2016 and 2015 as a result of the Restatement are due to the changes in net income and changes to additional paid in capital related to the impact of the correction of errors to stock-based compensation expense.

Impact on Consolidated Statements of Comprehensive Loss

The only change to the consolidated statements of comprehensive loss for the years ended June 30, 2016 and 2015 as a result of the Restatement is due to the changes in net income.

Impact on Consolidated Statements of Cash Flows

The effect of the Restatement described above on the accompanying consolidated statements of cash flows for the years ended June 30, 2016 and 2015 is as follows (in thousands):

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

	Year Ended June 30, 2016		
	As Previously Reported	Restatement Adjustments	As Restated
OPERATING ACTIVITIES:			
Net income	\$ 72,021	\$ 60	\$ 72,081
Reconciliation of net income to net cash provided by operating activities:			
Depreciation and amortization	13,282	—	13,282
Stock-based compensation expense	16,131	799	16,930
Excess tax benefits from stock-based compensation	(2,855)	43	(2,812)
Allowance for doubtful accounts	1,278	(62)	1,216
Provision for excess and obsolete inventories	9,313	71	9,384
Foreign currency exchange gain	(1,233)	(106)	(1,339)
Deferred income taxes, net	(6,133)	921	(5,212)
Changes in operating assets and liabilities:			
Accounts receivable, net (1)	32,375	21,200	53,575
Inventories	5,200	2,509	7,709
Prepaid expenses and other assets (1)	(8,210)	(15,329)	(23,539)
Accounts payable (1)	(54,301)	(11,534)	(65,835)
Income taxes payable	(3,260)	2,874	(386)
Accrued liabilities (1)	9,027	3,884	12,911
Other long-term liabilities	24,874	(4,852)	20,022
Net cash provided by operating activities	107,509	478	107,987
INVESTING ACTIVITIES:			
Purchases of property, plant and equipment (1)	(34,108)	—	(34,108)
Change in restricted cash	(1,020)	—	(1,020)
Net cash used in investing activities	(35,128)	—	(35,128)
FINANCING ACTIVITIES:			
Proceeds from debt, net of issuance costs	34,200	—	34,200
Repayment of debt	(34,100)	—	(34,100)
Proceeds from exercise of stock options	12,186	—	12,186
Excess tax benefits from stock-based compensation	2,855	(43)	2,812
Payments of obligations under capital leases	(189)	—	(189)
Payments under receivable financing arrangements	(21)	—	(21)
Payment of withholding tax on vesting of restricted stock units	(1,786)	—	(1,786)
Net cash provided by financing activities	13,145	(43)	13,102
Effect of exchange rate fluctuations on cash	(4)	(57)	(61)
Net increase in cash and cash equivalents	85,522	378	85,900
Cash and cash equivalents at beginning of year	95,442	(2,522)	92,920
Cash and cash equivalents at end of year	\$ 180,964	\$ (2,144)	\$ 178,820
Supplemental disclosure of cash flow information:			
Cash paid for interest	\$ 1,632	\$ —	\$ 1,632
Cash paid for taxes, net of refunds	\$ 36,951	\$ —	\$ 36,951
Non-cash investing and financing activities:			
Equipment purchased under capital leases	\$ 299	\$ —	\$ 299
Unpaid property, plant and equipment purchases (1)	\$ 10,888	\$ (39)	\$ 10,849

(1) Transactions with related parties are included in the line items above as follows:

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

	Years Ended June 30,		
	2016 As Reported	Adjustments	2016 As Restated
OPERATING ACTIVITIES:			
Changes in operating assets and liabilities:			
Accounts receivable, net	\$ 8,508	\$ (8,428)	\$ 80
Prepaid expenses and other assets	—	652	652
Accounts payable	(19,863)	(2,024)	(21,887)
Accrued liabilities	—	(340)	(340)
INVESTING ACTIVITIES:			
Purchases of property, plant and equipment	—	(4,641)	(4,641)
NON-CASH INVESTING AND FINANCING ACTIVITIES:			
Unpaid property, plant and equipment purchases	—	2,246	2,246

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

	Year Ended June 30, 2015		
	As Previously Reported	Restatement Adjustments	As Restated
OPERATING ACTIVITIES:			
Net income	\$ 101,863	\$ (9,308)	\$ 92,555
Reconciliation of net income to net cash used in operating activities:			
Depreciation and amortization	8,133	(39)	8,094
Stock-based compensation expense	13,699	737	14,436
Excess tax benefits from stock-based compensation	(8,089)	43	(8,046)
Allowance for doubtful accounts	326	(246)	80
Provision for excess and obsolete inventories	5,928	2	5,930
Foreign currency exchange gain	(675)	(155)	(830)
Deferred income taxes, net	632	(4,208)	(3,576)
Changes in operating assets and liabilities:			
Accounts receivable, net (1)	(110,182)	31,996	(78,186)
Inventories	(153,584)	(23,973)	(177,557)
Prepaid expenses and other assets (1)	(2,741)	(8,585)	(11,326)
Accounts payable (1)	75,520	6,181	81,701
Income taxes payable	11,951	(2,972)	8,979
Accrued liabilities (1)	9,551	4,342	13,893
Other long-term liabilities	3,032	4,696	7,728
Net cash used in operating activities	(44,636)	(1,489)	(46,125)
INVESTING ACTIVITIES:			
Purchases of property, plant and equipment (1)	(35,100)	—	(35,100)
Change in restricted cash	(416)	—	(416)
Investment in a privately held company	(661)	—	(661)
Net cash used in investing activities	(36,177)	—	(36,177)
FINANCING ACTIVITIES:			
Proceeds from debt, net of issuance costs	84,900	—	84,900
Repayments of debt	(36,000)	—	(36,000)
Proceeds from exercise of stock options	23,338	—	23,338
Excess tax benefits from stock-based compensation	8,089	(43)	8,046
Payment of obligations under capital leases	(134)	—	(134)
Advances under receivable financing arrangements	33	—	33
Payment of withholding tax on vesting of restricted stock units	(175)	—	(175)
Net cash provided by financing activities	80,051	(43)	80,008
Effect of exchange rate fluctuations on cash	(668)	400	(268)
Net decrease in cash and cash equivalents	(1,430)	(1,132)	(2,562)
Cash and cash equivalents at beginning of year	96,872	(1,390)	95,482
Cash and cash equivalents at end of year	\$ 95,442	\$ (2,522)	\$ 92,920
Supplemental disclosure of cash flow information:			
Cash paid for interest	\$ 933	\$ —	\$ 933
Cash paid for taxes, net of refunds	\$ 30,671	\$ —	\$ 30,671
Non-cash investing and financing activities:			
Equipment purchased under capital leases	\$ 442	\$ —	\$ 442
Unpaid property, plant and equipment purchases (1)	\$ 6,826	\$ 236	\$ 7,062

(1) Transactions with related parties are included in the line items above as follows:

SUPER MICRO COMPUTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

	Years Ended June 30,		
	2015 As Reported	Adjustments	2015 As Restated
OPERATING ACTIVITIES:			
Changes in operating assets and liabilities:			
Accounts receivable, net	\$ (12,565)	\$ 13,057	\$ 492
Prepaid expenses and other assets	—	(10,274)	(10,274)
Accounts payable	10,046	12,142	22,188
Accrued liabilities	—	1,364	1,364
INVESTING ACTIVITIES:			
Purchases of property, plant and equipment	—	(4,070)	(4,070)
NON-CASH INVESTING AND FINANCING ACTIVITIES:			
Unpaid property, plant and equipment purchases	—	724	724

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None.

Item 9A. Controls and Procedures

Background

In August 2017, prior to the issuance of the Company's consolidated financial statements for the fiscal year ended June 30, 2017, the audit committee (the "Audit Committee") of the Company's Board of Directors (the "Board") commenced an investigation (the "Investigation") into certain accounting and internal control matters at the Company, principally focused on certain revenue recognition matters. The Investigation was conducted with the assistance of outside counsel, which retained forensic accountants to assist them in their work. Following the conclusion of the Investigation, the Audit Committee directed its outside counsel and its forensic accountants to conduct additional procedures on an expanded scope of revenue recognition matters. Concurrently with these additional procedures, new members of the Company's management, under the direction of the Audit Committee, performed a thorough analysis of the Company's historical financial statements, accounting policies and financial reporting, as well as the Company's disclosure controls and procedures and its internal control over financial reporting. During the course of the Investigation, the further procedures by outside counsel and the management analysis (collectively, the "Investigation, Procedures and Analysis"), the Audit Committee and management discovered accounting and financial reporting errors and certain irregularities.

The Audit Committee and management also discovered internal control deficiencies and determined that certain employees had violated the Company's Code of Business Conduct and Ethics ("Code of Conduct"). In connection with the preparation and filing of this Annual Report on Form 10-K, we have conducted the requisite evaluations of the effectiveness of our disclosure controls and procedures and of our internal control over financial reporting both as of June 30, 2017. These conclusions are explained below.

Evaluation of Disclosure Controls and Procedures

Under the supervision, and with the participation, of our current management, including our CEO and CFO, we evaluated the effectiveness of our disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as of June 30, 2017. Based on this evaluation of our disclosure controls and procedures, our CEO and CFO have concluded that our disclosure controls and procedures were not effective as of June 30, 2017 because of certain material weaknesses in our internal control over financial reporting, as further described below.

Notwithstanding the conclusion by our CEO and CFO that our disclosure controls and procedures as of June 30, 2017 were not effective, and notwithstanding the material weaknesses in our internal control over financial reporting described below, management believes that the consolidated financial statements and related financial information included in this Annual Report on Form 10-K fairly present in all material respects our financial condition, results of operations and cash flows as of the dates presented, and for the periods ended on such dates, in conformity with accounting principles generally accepted in the United States of America ("U.S. GAAP").

Management's Report on Internal Control Over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rules 13a-15(f) and 15d-15(f).

Internal control over financial reporting is a process designed by, or under the supervision of, our CEO and CFO to provide reasonable assurance regarding the reliability of financial reporting and the preparation of our consolidated financial statements for external purposes in accordance with U.S. GAAP. Management's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of our assets, (ii) provide reasonable assurance that transactions are appropriately recorded to permit preparation of financial statements in accordance with U.S. GAAP and that our receipts and expenditures are made only in accordance with authorizations of management, acting under authority delegated to them by the Board, and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on our financial statements.

Management, including our CEO and CFO, assessed our internal control over financial reporting as of June 30, 2017. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in *Internal Control - Integrated Framework (2013)* (the “COSO Framework”). Based on this assessment, management has determined that we did not maintain effective internal control over financial reporting as of June 30, 2017 because of the material weaknesses described below.

A material weakness in internal controls is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis. Because of its inherent limitations, even appropriate internal control over financial reporting may not prevent or detect misstatements.

In connection with management’s assessment of the Company’s internal control over financial reporting described above, management has identified the deficiencies described below that constituted material weaknesses in our internal control over financial reporting as of June 30, 2017. These deficiencies led to material errors in our previously issued financial statements, which in turn led to the restatement of those previously issued financial statements, as described in Note 19 to our consolidated financial statements included in this Annual Report on Form 10-K.

Control Environment

We have identified deficiencies in the control environment component of the COSO Framework that constitute material weaknesses, either individually or in the aggregate. These deficiencies related to all the principles associated with the control environment component of the COSO Framework. Contributing factors include:

- We had a culture of aggressively focusing on quarterly revenue without sufficient focus on compliance. Senior management did not establish and promote a control environment with an appropriate tone of compliance and control consciousness throughout the entire Company. The Company did not sufficiently promote, monitor or enforce adherence to the Code of Conduct. In the pursuit of quarterly revenue, certain of our sales, finance and operations personnel, including officers and managers, were aware of, condoned or were involved in actions that reflected an inappropriate tone at the top, that violated our Code of Conduct and our accounting policies and procedures, and that were inconsistent with a commitment to integrity and ethical values. These actions included (i) shipping products in advance of customer requested delivery dates, (ii) shipping products to storage facilities at the end of a quarter for later delivery to customers, (iii) in certain cases entering into side agreements with customers, (iv) in certain cases, shipping products before manufacturing was completed, (v) altering source documents related to some sales transactions and (vi) failing to disclose or obscuring material facts about sales transactions. As a result of those actions, we recognized revenue from numerous sales transactions in the incorrect period, although these valid sales transactions were recognized in one or more subsequent quarters in the aforementioned restatement. Some employees, including officers and managers, also failed to raise issues with material accounting consequences to the Audit Committee and our external auditors, and with respect to one transaction, appear to have attempted to minimize material facts about a sales transaction to, or obscure those facts from, the Audit Committee and our external auditors. Finally, we did not, on a consistent basis, (i) timely and thoroughly detect and address failures to comply with the Code of Conduct and (ii) train employees adequately to identify and report issues to management and the Audit Committee.
- The Company did not maintain a sufficient complement of management, accounting, financial reporting, sales, operations, engineering and information technology personnel who had appropriate levels of knowledge, experience, and training in accounting and internal control matters commensurate with the nature, growth and complexity of our business. The lack of sufficient appropriately skilled and trained personnel contributed to our failure to (i) adequately identify potential risks, (ii) include in the scope of our internal controls framework certain systems relevant to financial reporting and the preparation of our consolidated financial statements, (iii) design and implement certain risk-mitigating internal controls and (iv) consistently operate certain of our internal controls. The lack of sufficient appropriately skilled and trained personnel also contributed to deficiencies in establishing and maintaining policies and procedures, establishing and enforcing standards for maintaining documents for revenue recognition purposes and establishing accountability for internal controls across the entire Company.

Due to the interdependencies between the COSO Framework components, the weaknesses in our control environment contributed to other material weaknesses within our system of internal control over financial reporting.

Risk Assessment

We have identified deficiencies in the risk assessment component of the COSO Framework that aggregate to a material weakness. These deficiencies related to the principles associated with the risk assessment component of the COSO Framework, specifically principles within the component related to: (i) identifying, assessing, and communicating appropriate control objectives, (ii) identifying and analyzing risks to achieve these objectives, (iii) contemplating fraud risks, and (iv) identifying and assessing changes in the business that could impact our system of internal controls.

Control Activities

We have identified deficiencies in the control activities component of the COSO Framework that aggregate to a material weakness. These deficiencies related to principles associated with the control activities component of the COSO Framework, specifically principles within the component related to (i) selecting and developing control activities that mitigate risks (ii) selecting and developing general controls over technology and (iii) deploying control activities through policies that establish what is expected and procedures that put policies into action. We did not design or operate certain control activities to sufficiently respond to potential risks of material misstatement in the area of revenue recognition. We did not effectively select and develop certain information technology (“IT”) general controls and we also had control deficiencies at both the IT administrator and end-user levels across multiple applications relevant to financial reporting. We also had deficiencies related to segregation of duties. Deficiencies in control activities contributed to material accounting errors, and the potential for there to have been material accounting errors, in substantially all financial statements account balances and disclosures.

Information and Communication

We have identified deficiencies in the information and communication component of the COSO Framework that aggregate to a material weakness. These deficiencies related to principles associated with the information and communications component of the COSO Framework, specifically principles within the component related to (i) generating and using relevant quality information, (ii) internally communicating information, including objectives and responsibilities for internal control, necessary to support the functioning of internal control and (iii) communicating with external parties regarding matters affecting the functioning of internal control. We rely on manual business processes to compensate for a lack of extensive integration in our information systems. We also rely heavily on each of our various functions, such as sales, operations, accounting, legal and management, to communicate to the other functions information that the entire organization needs to operate an effective internal control environment. In certain areas, our control activity deficiencies resulted from insufficient communication of information among our internal functions as well as from officers and managers to both the Audit Committee and our external auditors.

Monitoring of Controls

We have identified deficiencies in the monitoring of controls component of the COSO Framework that aggregate to a material weakness. There were deficiencies related to principles associated with the monitoring of controls component of the COSO Framework, specifically principles within the component related to (i) selecting, developing and performing ongoing and/or separate evaluations and (ii) evaluating and communicating deficiencies in a timely manner. We lacked controls (i) to determine whether components of internal control were present and functioning, (ii) to mitigate the risk of management overriding internal controls and (iii) to detect incorrect accounting practices. Consequently, we did not identify internal control deficiencies, or did not raise such deficiencies in a timely manner to those parties responsible for internal controls. In addition, we did not always ensure that these deficiencies were remediated thoroughly and timely.

The material weaknesses noted above contributed to the following additional material weaknesses:

Revenue Recognition Accounting

We have identified deficiencies in revenue recognition accounting controls that resulted in material errors constituting material weaknesses, either individually or in the aggregate, as we did not appropriately design, or effectively operate, internal controls over certain aspects of accurate recording, presentation, and disclosure of revenue and related costs. The following were contributing factors to the material weaknesses in revenue recognition accounting:

- The Company's internal controls did not consistently identify and properly account for key non-standard contract or arrangement terms for sales transactions that involved multiple elements (such as when the price of a system includes an extended warranty period and/or our agreement to provide services to our customer). Specifically, the Company's internal controls failed to identify, accumulate and assess the accounting impact of situations in which we recognized revenue before all the elements necessary to establish "delivery" had occurred.
- With respect to sales transactions near quarter-end, our internal controls failed to consistently identify transactions where the terms of the sales arrangements with our customers were not properly documented in a form that fully reflected the final understanding between the parties as to the specific nature and terms of the agreed-upon transaction.
- Our internal controls failed to consistently identify, resolve, document in our accounting system and allow for proper accounting where there were inconsistencies among the various documents underlying our sales transactions, and we did not always communicate the existence or resolution of those inconsistencies to our accounting organization to enable the proper recognition of revenue.
- We lacked a control to ensure a consistent approach for reviewing our pricing and establishing supportable estimates of best estimated selling prices in allocating revenue between multiple elements. Consequently, we did not always correctly calculate the portions of the total revenue recognized from sales transactions allocated among the various elements.

Information Technology General Controls

We have identified deficiencies related to IT general controls that represent a material weakness, either individually or in the aggregate. The following were contributing factors:

- We have a decentralized approach to developing IT policies and practices and to monitoring our IT controls. As a result, our internal procedures for granting and monitoring employee access, and managing changes to various applications and infrastructure layers relevant to our financial reporting are not consistent across those applications and infrastructure layers. In addition, some of our internally-developed applications relevant to financial reporting lack logging capabilities to monitor access changes or application changes. We have also authorized certain users with broad access, both as a user and as an administrator, to all parts of our primary accounting system without adequate monitoring or recording of how they used that access. As a result of these factors, we have material weaknesses related to access controls and change management. The fact that we had material weaknesses related to access controls and change management means that it is possible that our business process controls that depend on the affected information systems, or that depend on data or financial reports generated from affected information systems, could be adversely affected due to the access control and change management issues, although we have identified no instances of any adverse effect due to these deficiencies.

The effectiveness of our internal control over financial reporting as of June 30, 2017 has been audited by Deloitte & Touche LLP, our independent registered public accounting firm, as stated in its report that is included herein.

Remediation Plan and Status

Our management is committed to remediating identified control deficiencies (including both those that rise to the level of a material weakness and those that do not), fostering continuous improvement in our internal controls and enhancing our overall internal controls environment. Our management believes that these remediation actions, along with additional actions, when fully implemented, will remediate the material weaknesses we have identified and strengthen our internal control over financial reporting. We are committed to improving our internal control processes and intend to continue to review and improve our financial reporting controls and procedures. As we continue to evaluate and work to improve our internal control over financial reporting, we may take additional measures to address control deficiencies with the overall objective to design and operate internal controls that mitigate identified risks and enable an effective system of internal control over external financial reporting.

To date, we have taken the following remediation actions:

- Restructured our sales organization, which resulted in the resignations of the Senior Vice President of International Sales, the Senior Vice President of Worldwide Sales, the Vice President, Strategic Accounts, the Vice President, Strategic Sales, the Vice President, Business Development and certain other sales personnel.

- Appointed experienced professionals to key accounting and finance and compliance leadership positions, including the appointments of a new Chief Financial Officer and a new Corporate Controller in January 2018, and the creation of, and appointments to, two newly established roles of Chief Compliance Officer and Vice President of Internal Audit in May 2018 and August 2018, respectively.
- Reviewed and amended our Code of Conduct to align with the organizational changes described above and to strengthen certain provisions regarding compliance and reporting.
- Adopted an Internal Audit Charter setting forth the responsibilities of the internal audit function and establishing that the Vice President of Internal Audit reports directly to the Audit Committee and that the Audit Committee has authority to provide adequate funding for this function.
- Changed our organizational structure to narrow the scope of responsibilities of certain of our senior executives and to revise various reporting relationships, which included the appointment of a new Senior Vice President of Worldwide Sales, and a new Senior Vice President of Operations.
- Conducted training in the following areas:
 - Revenue recognition training for our global sales force, various operations personnel, and certain senior executives, including our CEO, which included detailed examples of acceptable and unacceptable sales practices,
 - Reviewing with our senior management team our amended Code of Conduct,
 - Reviewing with our CEO enhanced processes for periodic evaluations by the CEO and the CFO of the effectiveness of our disclosure controls and procedures, and the periodic assessments by the CEO and the CFO of the effectiveness of our internal control over financial reporting, and other compliance matters, and
 - Shipping and cut-off training for accounting and operations personnel that included new requirements for quarter-end procedures.
- Upgraded our accounting department to include the new roles of Senior Director of Tax, Financial Audit Director and Information Technology Audit Director, as well as replaced certain of our accounting personnel with more experienced individuals, including rebuilding and expanding our revenue recognition team.
- Enhanced the sales sub-certification document that supports our CEO's and CFO's financial statement certifications and expanded the sub-certification participation population to the global sales force.

Our management believes that meaningful progress has been made on the remaining remediation efforts. Although timetables vary, management regards successful completion of our remaining remediation actions as an important priority. Some of the more significant remaining remediation activities include:

- Developing and implementing an ongoing compliance training program regarding significant accounting and financial reporting matters, as well as broad compliance matters, for accounting, financial reporting, sales and operations personnel, as well as for our CEO, our other corporate executives and the Board.
- Integrating the responsibility for internal controls across business functions to ensure accountability for internal controls beyond the accounting and finance team.
- Continuing to assess current staffing levels and competencies to ensure the optimal complement of personnel with appropriate qualifications and skill sets.
- Reevaluating and revising our Sarbanes-Oxley compliance program (our "SOX Program"), and making improvements to our SOX Program governance, risk assessment processes, testing methodologies and corrective action mechanisms.
- Redesigning and implementing necessary changes to the existing system of internal controls in the context of the revised and more comprehensive risk assessment.

- Assigning accountability for certain internal controls to our Compliance Department, such as our organizational-wide quarterly sales certification process.
- Reevaluating the boundary applications that interface with our primary accounting and reporting application and redesigning logical access and program change controls to enhance the reliability of information used to conduct other internal controls.
- Continuing to re-assess risks and controls related to the accurate recording, presentation, and disclosure of revenue and related costs

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the three months ended June 30, 2017 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
Super Micro Computer, Inc.
San Jose, California

We have audited the internal control over financial reporting of Super Micro Computer, Inc. and subsidiaries (the “Company”) as of June 30, 2017, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”). The Company’s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management’s Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company’s internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company’s internal control over financial reporting is a process designed by, or under the supervision of, the company’s principal executive and principal financial officers, or persons performing similar functions, and effected by the company’s board of directors, management, and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company’s internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company’s assets that could have a material effect on the financial statements.

Because of the inherent limitations of internal control over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may not be prevented or detected on a timely basis. Also, projections of any evaluation of the effectiveness of the internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company’s annual or interim financial statements will not be prevented or detected on a timely basis. The following material weaknesses have been identified and included in management’s assessment:

Control Environment - The Company identified deficiencies in the control environment component of the COSO framework that constitute material weaknesses, either individually or in the aggregate. These deficiencies related to all the principles associated with the control environment component of the COSO framework, and contributing factors include:

- The Company had a culture of aggressively focusing on quarterly revenue without sufficient focus on compliance. Senior management, did not establish and promote a control environment with an appropriate tone of compliance and control consciousness throughout the entire Company. The Company did not sufficiently promote, monitor or enforce adherence to the Code of Business Conduct and Ethics (“Code of Conduct”). In the pursuit of quarterly revenue, certain sales, finance and operations personnel, including officers and managers, were aware of, condoned or were involved in actions that reflected an inappropriate tone at the top, that violated the Code of Conduct and accounting policies and procedures, and that were inconsistent with a commitment to integrity and ethical values. As a result of those actions, the Company recognized revenue from numerous sales transactions in the incorrect period. Some Company employees, including officers and managers, also failed to raise issues with material accounting consequences to the Audit Committee and to us, as its external auditors, and with respect to one transaction, appear to have attempted to minimize material facts about a sales transaction to, or obscure those facts from, the Audit Committee and us, as its external auditors. Finally, the Company did not, on a consistent basis, (i) timely and thoroughly detect and address failures to comply with the Code of Conduct and (ii) train employees adequately to identify and report issues to management and the Audit Committee.
- The Company did not maintain a sufficient complement of management, accounting, financial reporting, sales, operations, engineering and information technology personnel who had appropriate levels of knowledge, experience, and training in accounting and internal control matters. The lack of sufficient appropriately skilled and trained personnel also contributed to deficiencies in establishing and maintaining policies and procedures, establishing and enforcing standards for maintaining documents for revenue recognition purposes and establishing accountability for internal controls across the entire Company.

Due to the interdependencies between the COSO framework components, the material weaknesses in the control environment contributed to other material weaknesses within the Company’s system of internal control over financial reporting.

Risk Assessment - The Company identified deficiencies in the risk assessment component of the COSO framework that aggregate to a material weakness. These deficiencies related to the principles associated with the risk assessment component of the COSO framework, specifically principles within the component related to: (i) identifying, assessing, and communicating appropriate control objectives, (ii) identifying and analyzing risks to achieve these objectives, (iii) contemplating fraud risks, and (iv) identifying and assessing changes in the business that could impact the system of internal controls.

Control Activities - The Company identified deficiencies in the control activities component of the COSO framework that aggregate to a material weakness. These deficiencies related to principles associated with the control activities component of the COSO framework, specifically principles within the component related to (i) selecting and developing control activities that mitigate risks (ii) selecting and developing general controls over technology and (iii) deploying control activities through policies that establish what is expected and procedures that put policies into action. The Company did not design or operate certain control activities to sufficiently respond to potential risks of material misstatement in the area of revenue recognition. The Company had deficiencies related to segregation of duties. Deficiencies in control activities contributed to material accounting errors, and the potential for there to have been material accounting errors, in substantially all financial statements account balances and disclosures.

Information and Communication - The Company identified deficiencies in the information and communication component of the COSO framework that aggregate to a material weakness. These deficiencies related to principles associated with the information and communications component of the COSO framework, specifically principles within the component related to (i) generating and using relevant quality information and (ii) internally communicating information, including objectives and responsibilities for internal control, necessary to support the functioning of internal control and (iii) communicating with external parties regarding matters affecting the functioning of internal control. In certain areas, the Company’s control activity deficiencies resulted from insufficient communication of information among its internal functions as well as from officers and managers to both the Audit Committee and to us, as its external auditors.

Monitoring of Controls - The Company identified deficiencies in the monitoring of controls component of the COSO framework that aggregate to a material weakness. There were deficiencies related to principles associated with the monitoring of controls component of the COSO framework, specifically principles within the component related to (i) selecting, developing and performing ongoing and/or separate evaluations and (ii) evaluating and communicating deficiencies in a timely manner. The Company lacked controls (i) to determine whether components of internal control were present and functioning, (ii) to mitigate the risk of management overriding internal controls and (iii) to detect incorrect accounting practices. Consequently, the Company did not identify internal control deficiencies, or did not raise such deficiencies in a timely manner to those parties responsible for internal controls. In addition, the Company did not always ensure that these deficiencies were remediated thoroughly and timely.

The material weaknesses noted above contributed to the following additional material weaknesses:

Revenue Recognition Accounting - The Company identified deficiencies in revenue recognition accounting controls that resulted in material errors constituting material weaknesses, either individually or in the aggregate, as the Company did not appropriately design, or effectively operate, internal controls over certain aspects of accurate recording, presentation, and disclosure of revenue and related costs. The following were contributing factors to the material weaknesses in revenue recognition accounting:

- The Company’s internal controls did not consistently identify and properly account for key non-standard contract or arrangement terms for sales transactions that involved multiple elements (such as when the price of a system includes an extended warranty period and/or the Company’s agreement to provide services to its customer). Specifically, the Company’s internal controls failed to identify, accumulate and assess the accounting impact of situations in which they recognized revenue before all the elements necessary to establish “delivery” had occurred.
- With respect to sales transactions near quarter-end, the Company’s internal controls failed to consistently identify transactions where the terms of the sales arrangements with its customers were not properly documented in a form that fully reflected the final understanding between the parties as to the specific nature and terms of the agreed-upon transaction.
- The Company’s internal controls failed to consistently identify, resolve, document in its accounting system and allow for proper accounting where there were inconsistencies among the various documents underlying its sales transactions, and the Company did not always communicate the existence or resolution of those inconsistencies to its accounting organization to enable the proper recognition of revenue.
- The Company lacked a control to ensure a consistent approach for reviewing its pricing and establishing supportable estimates of best estimated selling prices in allocating revenue between multiple elements. Consequently, the Company did not always correctly calculate the portions of the total revenue recognized from sales transactions allocated among the various elements.

Information Technology General Controls - The Company identified deficiencies related to information technology (“IT”) general controls that represent a material weakness, either individually or in the aggregate. The following were contributing factors:

- Procedures for granting and monitoring employee access to, and managing changes to, various applications and infrastructure layers relevant to financial reporting were not consistent across those applications and infrastructure layers. In addition, some internally-developed applications relevant to financial reporting lacked logging capabilities to monitor access changes or application changes. Also, certain users were authorized to have broad access, both as a user and as an administrator, to all parts of primary accounting system without adequate monitoring or recording of how they used that access. As a result of these factors, the Company has material weaknesses related to access controls and change management. The fact that the Company had material weaknesses related to access controls and change management means that it is possible that its business process controls that depend on the affected information systems, or that depend on data or financial reports generated from affected information systems, could be adversely affected due to the access control and change management issues.

These material weaknesses were considered in determining the nature, timing, and extent of audit tests applied in our audit of the consolidated financial statements as of and for the year ended June 30, 2017, of the Company and this report does not affect our report on such financial statements.

In our opinion, because of the effect of the material weaknesses identified above on the achievement of the objectives of the control criteria, the Company has not maintained effective internal control over financial reporting as of June 30, 2017, based on the criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated financial statements as of and for the year ended June 30, 2017, of the Company and our report dated May 16, 2019 expressed an unqualified opinion on those financial statements and included explanatory paragraphs regarding

the accompanying 2016 and 2015 consolidated financial statements, which have been restated to correct misstatements, and significant purchases from and sales to two related parties.

/s/ Deloitte & Touche LLP

San Jose, California
May 16, 2019

Item 9B. Other Information

None.

PART III**Item 10. Directors, Executive Officers, and Corporate Governance****Executive Officers and Directors**

The following table sets forth information regarding our current directors and executive officers and their ages as of March 31, 2019:

Name	Age	Position(s)
Charles Liang	61	President, Chief Executive Officer and Chairman of the Board
Kevin Bauer	59	Senior Vice President, Chief Financial Officer
Don Clegg	60	Senior Vice President of Worldwide Sales
George Kao	58	Senior Vice President of Operations
David Weigand	60	Senior Vice President, Chief Compliance Officer
Sara Liu	57	Co-Founder, Senior Vice President and Director
Laura Black(1)(4)	57	Director
Michael S. McAndrews(1)(4)	66	Director
Hwei-Ming (Fred) Tsai(1)(2)(3)(4)	63	Director
Saria Tseng(2)(3)(4)	48	Director
Sherman Tuan(2)(3)(4)	65	Director
Tally Liu(1)(4)	68	Director

- (1) Member of the Audit Committee
(2) Member of the Compensation Committee
(3) Member of the Nominating and Corporate Governance Committee
(4) Determined by the Board of Directors to be “independent”

Executive Officers and Management Directors

Charles Liang founded Super Micro and has served as our President, Chief Executive Officer and Chairman of the Board since our inception in September 1993. Mr. Liang has been developing server system architectures and technologies for the past two decades. From July 1991 to August 1993, Mr. Liang was President and Chief Design Engineer of Micro Center Computer Inc., a high-end motherboard design and manufacturing company. From January 1988 to April 1991, Mr. Liang was Senior Design Engineer and Project Leader for Chips & Technologies, Inc., a chipset technology company, and Suntek Information International Group, a system and software development company. Mr. Liang has been granted many server technology patents. Mr. Liang holds an M.S. in Electrical Engineering from the University of Texas at Arlington and a B.S. in Electrical Engineering from National Taiwan University of Science & Technology in Taiwan. Our Nominating and Corporate Governance Committee (“Governance Committee”) concluded that Mr. Liang should serve on the Board based on his skills, experience and qualifications in managing technology businesses, his technical expertise, and his long familiarity with our company’s business.

Kevin Bauer has served as our Senior Vice President, Chief Financial Officer since January 2018 and previously served as our Senior Vice President, Corporate Development and Strategy beginning January 2017. Prior to his employment with our company, Mr. Bauer was the Senior Vice President and Chief Financial Officer of Pericom Semiconductor Corporation, a semiconductor company, from February 2014 until its sale to Diodes, Incorporated in November 2015 and, thereafter, assisted Diodes with the integration of Pericom until November 2016. Prior to that he was Chief Financial Officer of Exar Corporation, a semiconductor manufacturer, from June 2009 through December 2012, Corporate Controller from August 2004 to June 2009 and Operations Controller from February 2001 to August 2004. Previously, Mr. Bauer was Operations Controller at WaferTech LLC (a subsidiary of Taiwan Semiconductor Manufacturing Company Limited) from July 1997 to February 2001. Prior to WaferTech, he was at VLSI Technology for ten years where he held a variety of increasingly more

senior finance roles culminating in his position as Director and Group Controller. Mr. Bauer received an M.B.A. from Santa Clara University and a B.S. in Business Administration from California Lutheran University.

Don Clegg serves as our Senior Vice President of Worldwide Sales. He previously served as our Vice President of Marketing and Worldwide Business Development. Mr. Clegg has been an employee since April 2006 and has held various senior sales and marketing roles with the Company during that time. Mr. Clegg started his career as a Design Engineer and evolved from Engineer to Vice President of Sales and Marketing working at several established and startup Silicon Valley system and semiconductor companies. Mr. Clegg graduated with high honors from Brigham Young University, where he earned a B.S. in Electrical Engineering.

George Kao serves as our Senior Vice President of Operations and previously served as our Vice President of Operations. Mr. Kao joined the Company in October 2016. Mr. Kao was Vice President of Operations of Pericom Semiconductor Corp. from October 2006 to September 2016. Mr. Kao served as a Chief Operating Officer of Orient Semiconductor Electronics Philippines, Inc., a subsidiary of Orient Semiconductor Electronics Ltd., from September 2003 to March 2006. Mr. Kao joined Orient Semiconductor Electronics Philippines, Inc. from Santa Clara-based Foveon after a 20-year career in technology in the United States that began at National Semiconductor. Mr. Kao holds a B.S. in Electrical Engineering from California State Polytechnic University.

David Weigand has served as our Senior Vice President, Chief Compliance Officer since May 2018. Prior to his employment with our company, Mr. Weigand was a Vice President at Hewlett Packard Enterprise (HPE) from November 2016 until April 2018 and served as Vice President, Tax at Silicon Graphics International, Inc., from September 2013 until its acquisition by HPE in November 2016. Prior to that he was Vice President, Chief Financial Officer of Renesas Electronics America, a semiconductor company formed by the merger of the semiconductor businesses of NEC Corporation, Hitachi and Mitsubishi Electric from October 2010 until April 2013, and Vice President, Controller of NEC Electronics America from October 2004 until September 2010. Mr. Weigand holds a M.S. degree in Taxation from the University of Hartford and a B.S. degree in Accounting from San Jose State University and is a Certified Public Accountant in California (Inactive).

Sara Liu co-founded Super Micro in September 1993, has been a member of our Board of Directors since March 2007 and currently serves as our Co-Founder, Senior Vice President, and a director. She has held a variety of positions with the Company, including Treasurer from inception to May 2019, Senior Vice President of Operations from May 2014 to February 2018, and Chief Administrative Officer from October 1993 to May 2019. From 1985 to 1993, Ms. Liu held accounting and operational positions for several companies, including Micro Center Computer Inc. Ms. Liu holds a B.S. in Accounting from Providence University in Taiwan. Ms. Liu is married to Mr. Charles Liang, our Chairman, President and Chief Executive Officer. Our Governance Committee concluded that Ms. Liu should serve on the Board based on her skills, experience, her general expertise in business and operations and her long familiarity with our company's business.

Non-Management Directors

Laura Black has been a member of our Board of Directors since April 2012. Since March 1999, she has served as a Managing Director of Needham & Company, LLC, a full-service investment banking firm. At Needham, she has raised public and private equity capital for numerous technology companies and served as strategic financial advisor on multiple M&A transactions. From July 1995 to February 1999, she served as a Managing Director and Corporate Finance at Black & Company, a regional investment bank subsequently acquired by Wells Fargo Van Kasper. From July 1993 to June 1995, Ms. Black served as a Director for TRW Avionics & Surveillance Group where she evaluated acquisition candidates, managed direct investments and raised venture capital to back spin-off companies. From August 1983 to August 1992, she worked at TRW as an electrical engineer designing spread spectrum communication systems. Ms. Black holds a BSEE from University of California at Davis, a MSEE from Santa Clara University and a MS Management from Stanford. Our Governance Committee concluded that Ms. Black should serve on the Board based on her skills, experience and qualifications in capital finance, her financial literacy and her familiarity with technology businesses.

Michael S. McAndrews has been a member of our Board of Directors since February 2015. Mr. McAndrews has served as a Principal of Abbott, Stringham & Lynch, an accounting firm serving the Silicon Valley, since September 2013. From June 2002 to June 2013, he served as a Partner at PricewaterhouseCoopers LLP, a multinational professional services network, where he provided tax planning and consulting services to multinational public companies, private companies and their owners and emerging businesses in a variety of industries including high-technology, manufacturing, food processing and wholesale/retail distribution. From November 1979 to June 2002, he worked for Arthur Andersen and Company, a global professional services firm. He served as Partner from 1993 to 2002 where he focused primarily on providing tax planning and compliance services to high technology companies ranging in size from start-ups to large multinational public companies. Mr. McAndrews is a certified public accountant with an active license in California and holds a Bachelor of Science in Commerce, Accounting

degree from Santa Clara University. Our Governance Committee concluded that Mr. McAndrews should serve on the Board based on his skills, experience, his financial literacy and his familiarity with technology businesses.

Hwei-Ming (Fred) Tsai has been a member of our Board of Directors since August 2006. Mr. Tsai served as an independent director of ANZ Bank (Taiwan) Limited, a wholly owned subsidiary of Australia and New Zealand Banking Group Limited from September 2013 to April 2019. Mr. Tsai has also served as an independent director of Dynapack International Technology Corporation, a public company in Taiwan, since June 2017. Mr. Tsai has been an independent business consultant since January 2010. Mr. Tsai served as Executive Vice President and Chief Financial Officer of SinoPac Bancorp, a financial holding company based in Los Angeles, California from February 2001 and August 2005, respectively, to December 2009. He also served as Senior Executive Vice President of Far East National Bank, a commercial bank that is held by SinoPac Bancorp from December 2002 to December 2009. Mr. Tsai holds a Master in Professional Accounting from the University of Texas at Austin and a B.A. in Accounting from National Taiwan University in Taiwan. Our Governance Committee concluded that Mr. Tsai should serve on the Board based on his skills, experience and qualifications in capital finance, his financial literacy and his familiarity with our company's business.

Saria Tseng has been a member of our Board of Directors since November 2016. Ms. Tseng has served as Vice President of Strategic Corporate Development, General Counsel and Secretary of Monolithic Power Systems, Inc. a fabless manufacturer of high-performance analog and mixed-signal semiconductors since 2004. From 2001 to 2004, Ms. Tseng served as Vice President, General Counsel and Corporate Secretary of MaXXan Systems, an enterprise class storage network system. Previously, Ms. Tseng was an attorney at Gray Cary (now DLA Piper) and Jones Day. Ms. Tseng is a member of the state bar in both California and New York and is a member of the bar association of the Republic of China, Taiwan. She holds Master of Law degrees from the University of California at Berkeley and the Chinese Culture University in Taipei. Our Governance Committee concluded that Ms. Tseng should serve on the Board based on her skills, experience and qualifications in business and corporate law, her legal expertise and her familiarity with technology business.

Sherman Tuan has been a member of our Board of Directors since February 2007. Mr. Tuan is founder of PurpleComm, Inc. (doing business as 9x9.tv), a platform for connected TV, where he has served as Chief Executive Officer since January 2005 and Chairman of the Board since June 2003. From September 1999 to May 2002, he was director of Metromedia Fiber Network, Inc., a fiber optical networking infrastructure provider. Mr. Tuan was co-founder of AboveNet Communications, Inc., an internet connectivity solutions provider, where he served as President from March 1996 to January 1998, Chief Executive Officer from March 1996 to May 2002 and director from March 1996 to September 1999. Mr. Tuan holds a degree in Electrical Engineering from Feng-Chia University in Taiwan. Our Governance Committee concluded that Mr. Tuan should serve on the Board based on his skills, experience and qualifications in managing technology businesses, his technical expertise, and his familiarity with our company's business.

Tally Liu was appointed to our Board of Directors and our Audit Committee on January 30, 2019. Mr. Liu has been retired since 2015. Prior to his retirement, Mr. Liu was Chief Executive Officer of Wintec Industries, a supply chain solutions company for high-tech manufacturers, from 2012 to 2015. Prior to Wintec, Mr. Liu served as Chairman of the Board and Chief Executive Officer of Newegg, Inc., an internet consumer technology retailer, from 2008 to 2010, and as President of Newegg in 2008. Prior to Newegg, Mr. Liu held various positions with Knight Ridder Inc., including Vice President, Finance & Advance Technology and Vice President of Internal Audit. Mr. Liu served as President of the International Newspapers Financial Executives (INFE) for one year before it merged with other media associations. A Certified Public Accountant from 1982-2007, Mr. Liu is a member of the American Institute of Certified Public Accountants (AICPA) with retired status, and was previously a member of the Florida Institute of Certified Public Accountants (FICPA). Mr. Liu is also a Certified Information System Auditor (CISA) and Certified Information Security Manager (CISM), with non-practice status, with the Information Systems Audit and Control Association (ISACA) and has also been certified in Control Self-assessment (CCSA) by the Institute of Internal Auditors (IIA). After earning his BA of Commerce from National Chengchi University, Taipei, Taiwan, and MBA from Florida Atlantic University, Mr. Liu received executive leadership training at the Stanford Advanced Finance Program in 1986 and at Harvard Business School in the Advanced Management Program (AMP) in 1998. Mr. Liu is not related to any member of our Board of Directors or any of our officers.

Except for Mr. Charles Liang and Ms. Sara Liu who are married, there are no other family relationships among any of our directors or executive officers.

Composition of the Board

Our authorized number of directors is eight. There are currently eight directors. Our amended and restated certificate of incorporation provides for a classified Board of Directors divided into three classes. The members of each class are elected

to serve a term expiring at the third succeeding annual meeting of stockholders after such election. Vacancies may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. Alternatively, the Board of Directors, at its option, may reduce the number of directors, provided that no decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

The current composition of the Board of Directors is:

Class I Directors (terms expiring at the 2019 annual meeting)	Charles Liang Sherman Tuan Tally Liu
Class II Directors (1)	Laura Black Michael S. McAndrews
Class III Directors (1)	Sara Liu Hwei-Ming (Fred) Tsai Saria Tseng

(1) Because we did not, prior to the filing of this Annual Report on Form 10-K, file our Annual Reports on Form 10-K for fiscal years 2017 and 2018, we were unable to hold our 2017 and 2018 annual meetings. We are not able to hold an annual meeting until such time as we have filed all delinquent Annual Reports on Form 10-K and our Annual Report on Form 10-K for the most recently completed fiscal year. As such, while the Class II Directors' terms were originally to expire at the 2017 annual meeting and the Class III Directors' terms were originally to expire at the 2018 annual meeting, we expect that the Class II Directors and Class III Directors will not come up for election until the 2019 annual meeting.

CORPORATE GOVERNANCE

Corporate Governance Guidelines

We have adopted "Corporate Governance Guidelines" to help ensure that the Board of Directors is independent from management, appropriately performs its function as the overseer of management, and that the interests of the Board of Directors and management align with the interests of the stockholders. The "Corporate Governance Guidelines" are available at www.Supermicro.com by first clicking on "About Us" and then "Investor Relations" and then "Corporate Governance."

Code of Ethics

We have adopted a "Code of Business Conduct and Ethics" that is applicable to all directors, executive officers and employees and embodies our principles and practices relating to the ethical conduct of our business and our long-standing commitment to honesty, fair dealing and full compliance with all laws affecting our business. The "Code of Business Conduct and Ethics" is available at www.Supermicro.com by first clicking on "About Us" and then "Investor Relations" and then "Corporate Governance." Any substantive amendment or waiver of the Code relating to executive officers or directors will be made only after approval by our Board of Directors and will be promptly disclosed on our website within four business days.

Director Independence

Although our common stock is not currently listed on Nasdaq, we have endeavored to continue to operate in accordance with Nasdaq listing standards with respect to director independence requirements. The rules of Nasdaq generally require that a majority of the members of a listed company's board of directors be independent. In addition, the listing rules generally require that, subject to specified exceptions, each member of a listed company's audit committee, compensation committee, and nominating and corporate governance committees be independent. Audit Committee members must also satisfy the independence criteria set forth in Rule 10A-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and the listing requirements of The Nasdaq Stock Market. In addition, compensation committee members must satisfy the independence criteria set forth in Rule 10C-1 under the Exchange Act and the listing requirements of The Nasdaq Stock Market.

The Board affirmatively determines the independence of each director and nominee for election as a director in accordance with Nasdaq listing standards.

Based on these standards, our Board of Directors has determined that five of its current eight members, Laura Black, Michael S. McAndrews, Hwei-Ming (Fred) Tsai, Saria Tseng, Sherman Tuan and Tally Liu, are "independent directors" under the applicable rules and regulations of the SEC and the listing requirements and rules of The Nasdaq Stock Market.

Executive Sessions

Non-management directors meet in executive session without management present each time the Board holds its regularly scheduled meetings.

Communications with the Board of Directors

The Board of Directors welcomes the submission of any comments or concerns from stockholders or other interested parties. If you wish to send any communications to the Board of Directors, you may use one of the following methods:

- Write to the Board at the following address:
Board of Directors
Super Micro Computer, Inc.
c/o General Counsel
980 Rock Avenue
San Jose, California 95131
- E-mail the Board of Directors at BODInquiries@supermicro.com

Communications that are intended specifically for the independent directors or non-management directors should be sent to the e-mail address or street address noted above, to the attention of the "Independent Directors."

MEETINGS AND COMMITTEES OF THE BOARD

Board Meetings

Each director is expected to devote sufficient time, energy and attention to ensure diligent performance of his or her duties and to attend all Board and committee meetings. We encourage, but do not require, each Board member to attend our annual meeting of stockholders. Four of our directors attended our annual meeting of stockholders held during fiscal 2017. The Board of Directors held four meetings during fiscal year 2017, each of which were regularly scheduled meetings. The Board of Directors also acted by written consent one time during fiscal year 2017. All directors attended at least 75% of the meetings of the Board of Directors and of the committees on which they served during the time they served as a director in fiscal year 2017.

Board Leadership Structure

Our Chairman, Charles Liang, is also our Chief Executive Officer. The Board and our Nominating and Corporate Governance Committee (the "Governance Committee") believe that it is appropriate for Mr. Liang to serve as both the Chief Executive Officer and Chairman due to the relatively small size of our Board, and the fact that Mr. Liang is the founder of our company with extensive experience in our industry. We do not currently have a lead independent director.

Board Role in the Oversight of Risk

Our Board exercises oversight over our risk management activities, requesting and receiving reports from management. The Board of Directors exercises this oversight responsibility directly and through its committees. Our Board has delegated primary responsibility for oversight of risks relating to financial controls and reporting to our Audit Committee, which in turn reports to the full Board on such matters as appropriate. The Audit Committee also assists the Board in oversight of certain risks, particularly in the areas of internal controls over financial reporting, financial reporting and review of related party transactions.

Our management with oversight from our Compensation Committee has reviewed its compensation policies and practices with respect to risk-taking incentives and risk management and does not believe that potential risks arising from its compensation policies or practices are reasonably likely to have a material adverse effect on our company.

Committees of the Board of Directors

The Board has three standing committees to facilitate and assist the Board of Directors in discharging its responsibilities: the Audit Committee, the Compensation Committee and the Governance Committee. In accordance with applicable Nasdaq listing standards, each of these committees is comprised solely of non-employee, independent directors. The charter for each committee is available at www.Supermicro.com by first clicking on “About Us” and then “Investor Relations” and then “Corporate Governance.” In January 2019, the Board of Directors approved amendments to the charters for each of the Audit Committee, the Compensation Committee and the Governance Committee, which amendments are reflected in the descriptions contained herein. The charter of each committee also is available in print to any stockholder who requests it. The following table sets forth the current members of each of the standing Board committees:

Audit Committee	Compensation Committee	Nominating and Corporate Governance Committee
Laura Black (1)	Sherman Tuan (1)	Sherman Tuan
Michael S. McAndrews	Hwei-Ming (Fred) Tsai	Hwei-Ming (Fred) Tsai (1)
Hwei-Ming (Fred) Tsai	Saria Tseng	Saria Tseng
Tally Liu		

(1) Committee Chairperson

Audit Committee

The Audit Committee has four members. The Audit Committee met nine times in fiscal year 2017, four of which were regularly scheduled meetings and five of which were special meetings. Our Board has determined that each member of our Audit Committee meets the requirements for independence under the applicable listing standards of Nasdaq and the rules of the SEC. Our Board of Directors has also determined that each member of our Audit Committee is an “audit committee financial expert” as defined under applicable SEC rules.

As outlined more specifically in the Audit Committee charter, the Audit Committee has, among other duties, the following responsibilities:

- The appointment, compensation and retention of our independent auditors, and the review and evaluation of the auditors’ qualifications, independence and performance;
- Oversees the auditors’ audit work and reviews and pre-approves all audit and non-audit services that may be performed by them;
- Discusses with the independent auditor any audit problems or difficulties and management’s response;
- Reviews and discusses with management press releases regarding our financial results, as well as financial information and earnings guidance provided to securities analysts and rating agencies;
- Reviews and approves the planned scope of our annual audit;
- Monitors the rotation of partners of the independent auditors on our engagement team as required by law;
- Reviews our financial statements and discusses with management and the independent auditors the results of the annual audit and the review of our quarterly financial statements;
- Reviews our critical accounting policies and estimates;
- Oversees the adequacy of our financial controls;
- Periodically reviews with management our disclosure controls and procedures and internal control over financial reporting;
- Reviews and approves the internal audit function’s (i) audit plan, (ii) all major changes to the audit plan, (iii) the scope, progress and results of executing the internal audit plan, and (iv) the annual performance of the internal audit function
- Reviews and approves all related party transactions;
- Establishes and oversees procedures for the receipt, retention and treatment of complaints regarding accounting, internal controls or auditing matters and oversees enforcement, compliance and remedial measures under our Code of Business Conduct and Ethics;
- Initiate investigations and hire legal, accounting and other outside advisors or experts to assist the Audit Committee, as it deems necessary to fulfill its duties;
- Periodically discusses with management our major financial risk exposures and steps management has taken to monitor and control the exposures, including our risk assessment and risk management guidelines and policies; and

- Reviews and evaluates, at least annually, the adequacy of the Audit Committee charter and recommends any proposed changes to the Board of Directors for approval.

Compensation Committee

The Compensation Committee has three members and met four times in fiscal year 2017. The Compensation Committee is comprised solely of non-employee directors. Our Board has determined that each member of our Compensation Committee meets the requirements for independence under the applicable Nasdaq listing standards.

As outlined more specifically in the Compensation Committee charter, the Compensation Committee has, among other duties, the following responsibilities:

- Periodically reviews and advises our Board concerning our overall compensation philosophy, policies and plans, including a review and approval of a group of companies for executive compensation competitive comparisons, approval of target pay and performance objectives against this group, and monitoring of our executive compensation levels and their performance relative to this group;
- Reviews and approves corporate goals and objectives relevant to compensation of the Chief Executive Officer and other executive officers;
- Evaluates the performance of the Chief Executive Officer and other executive officers in light of those goals and objectives, including against the performance of executive officers at comparable companies, all while taking into account our risk management policies and practices;
- Reviews and approves the compensation of the Chief Executive Officer and other executive officers;
- Oversees the evaluation of our executive officers other than the Chief Executive Officer;
- Reviews and approves the establishment and terms of our incentive compensation plans and equity compensation plans;
- Monitors and assesses risks associated with our compensation policies, including whether such policies could lead to unnecessary risk-taking behavior, and consults with management regarding such risks;
- Administers the issuance of restricted stock grants, stock options and other awards to executive officers, directors and other eligible individuals under our stock plans; and
- Reviews and evaluates, at least annually, the performance of the compensation committee and its members, including compliance of the compensation committee with its charter and the adequacy of the compensation committee charter.

Nominating and Corporate Governance Committee

The Governance Committee has three members and met four times in fiscal year 2017. The Governance Committee is comprised solely of non-employee directors. Our Board has determined that each member of our Governance Committee meets the requirements for independence under the applicable Nasdaq listing standards.

As outlined more specifically in the Governance Committee charter, the Governance Committee has, among other duties, the following responsibilities:

- Identifies individuals qualified to become directors;
- Evaluates and selects, or recommends to our Board of Directors, director nominees for each election of directors;
- Develops and recommends to our Board of Directors criteria for selecting qualified director candidates in the context of the current make-up of the Board of Directors;
- Considers any nominations of director candidates validly made by our stockholders;
- Reviews committees' structures and compositions and recommends to our Board of Directors concerning qualifications, appointment and removal of committee members;
- Develops, recommends for approval by the Board of Directors and reviews on an ongoing basis the adequacy of the corporate governance principles applicable us;
- Develops and recommends to our Board of Directors our Corporate Governance Guidelines;
- Reviews, on a periodic basis, the adequacy of our Corporate Governance Guidelines and recommends any proposed changes to our Board of Directors;
- Oversees compliance with our Corporate Governance Guidelines and reports on such compliance to our Board of Directors;
- Assists the Board of Directors in the evaluation of our Board of Directors and each committee;
- and

- Periodically reviews the scope of responsibilities of the Governance Committee and the committee's performance of its duties.

Section 16(a) Beneficial Ownership Reporting Compliance

The members of our Board of Directors, our executive officers and persons who hold more than 10% of our outstanding common stock are subject to the reporting requirements of Section 16(a) of the Exchange Act, which require them to file reports with respect to their ownership of our common stock and their transactions in our common stock. Based upon (i) the copies of Section 16(a) reports that we received from such persons for their fiscal year 2017 transactions in our common stock and their common stock holdings and (ii) the written representations received from one or more of such persons that no annual Form 5 reports were required to be filed by them for fiscal year 2017, we believe that all reporting requirements under Section 16(a) were met in a timely manner by the persons who were executive officers, members of the Board of Directors or greater than 10% stockholders during such fiscal year, other than one late report made by each of Howard Hideshima, Phidias Chou, Sherman Tuan and Yih-Shyan (Wally) Liaw in each case with respect to one transaction except for Phidias Chou who had two transactions, and two late reports made by Charles Liang and Sara Liu, in each case with respect to one transaction.

Item 11. Executive Compensation

EXECUTIVE COMPENSATION

Compensation Discussion and Analysis

In this section we provide an explanation and analysis of the material elements of the compensation provided to our Chief Executive Officer, Chief Financial Officer and other three most highly compensated executive officers who were serving as executive officers at the end of our fiscal year 2017 (collectively referred to as our “named executive officers”). Those named executive officers and their positions during the fiscal year 2017 were:

Charles Liang	President, Chief Executive Officer and Chairman of the Board
Howard Hideshima	Former Senior Vice President, Chief Financial Officer
Phidias Chou	Former Senior Vice President, Worldwide Sales
Yih-Shyan (Wally) Liaw	Former Senior Vice President of International Sales, Corporate Secretary and Director
Sara Liu	Senior Vice President of Operations, Chief Administrative Officer, Treasurer and Director

Messrs. Hideshima, Chou and Liaw resigned effective January 30, 2018. They did not receive any severance or other enhanced benefits in connection with their terminations of employment.

Process Overview

The Compensation Committee of the Board of Directors discharges the Board of Directors’ responsibilities relating to compensation of all of our executive officers. The Compensation Committee is comprised of three non-employee directors, all of whom are independent pursuant to the applicable listing rules of NASDAQ, Rule 16b-3 under the Exchange Act, and Section 162(m) of the Internal Revenue Code (“Code”).

The agenda for meetings is determined by the Chair of the Compensation Committee with the assistance of our Chief Financial Officer. Committee meetings are regularly attended by our Chief Financial Officer and our General Counsel. However, our Chief Financial Officer does not attend the portion of meetings during which his own performance or compensation is being discussed. Our Chief Financial Officer and General Counsel support the Compensation Committee in its work by providing information relating to our financial plans, performance assessments of our executive officers and other personnel-related data. In addition, the Compensation Committee has the authority under its charter to hire, terminate and approve fees for advisors, consultants and agents as it deems necessary to assist in the fulfillment of its responsibilities. In August 2016, as part of making an overall assessment of each individual’s role and performance, and structuring our compensation programs for fiscal year 2017, the Compensation Committee reviewed recommendations of management as well as publicly available peer group compensation data.

Compensation Philosophy and Objectives

It is the Compensation Committee's philosophy to link the named executive officers' compensation to corporate performance. The base salary, quarterly bonuses and equity award grants of the named executive officers are determined in part by the Compensation Committee reviewing data on prevailing compensation practices of comparable technology companies with whom we compete for executive talent, and evaluating such information in connection with our corporate goals and compensation practices. Our compensation philosophy has been unchanged over the last several years.

The Compensation Committee considers various sources of competitive data when determining executive compensation levels, including compensation data from a sampling of public companies and public compensation surveys obtained from Radford, an Aon Hewitt company. For fiscal year 2017 compensation decisions, the sample of companies consisted of the following, which were the same companies in our peer group for fiscal year 2016 compensation decisions:

Brocade Communications Systems, Inc.	Infinera Corporation
Cray, Inc.	NetApp, Inc.
Extreme Networks, Inc.	Netgear, Inc.

In selecting the companies for inclusion in the sample, the following factors were considered: industry, net revenues, operating income and whether the company may compete against us for executive talent. These companies ranged in annual revenue from approximately \$528.4 million to \$5.5 billion. For fiscal years 2017 and 2016, our net sales were \$2.5 billion and \$2.2 billion, respectively.

The Compensation Committee does not seek to specifically benchmark compensation based upon the sample companies reviewed nor does the Compensation Committee employ any other formulaic process in making compensation decisions. Rather, the Compensation Committee uses its subjective judgment based upon a review of all information, including an annual review for each officer of his or her level of responsibility, contributions to our financial results and our overall performance. The Compensation Committee makes a generalized assessment of these factors and this information is not weighted in any specific manner.

The compensation arrangements for several of our named executive officers, including our Chief Executive Officer, were significantly below median compensation levels for similar positions at comparable companies. This is principally due to the high level of stock ownership held by such persons. In the future, we may need to increase our recruiting of new executives from outside of our company. This in turn may require us to pay higher compensation closer to or in excess of that typically paid by comparable companies.

Finally, we believe that creating stockholder value requires not only managerial talent but active participation by all employees. In recognition of this, we try to minimize the number of compensation arrangements that are distinct or exclusive to our named executive officers. We currently provide base salary, quarterly bonuses and long-term equity incentive compensation to a considerable number of our domestic employees and international employees, in addition to our executive officers.

The Role of Stockholder Say-on-Pay Votes

Our Board of Directors, the Compensation Committee and our management value the opinions of our stockholders. At our annual meeting of stockholders held on March 1, 2017 (the "2016 Annual Meeting"), we provided our stockholders the opportunity to vote to approve, on an advisory basis, the compensation of our named executive officers as disclosed in the proxy statement for our 2016 Annual Meeting. At the meeting, 40,503,998 shares or approximately 99.2% of the stockholders who were present and entitled to vote on this "say-on-pay" proposal approved the compensation of our named executive officers, while only 41,966 or approximately 0.1% voted against (with approximately 280,370 shares or approximately 0.7% abstaining). 5,961,842 shares held by brokers were not entitled to vote with respect to this proposal. Although the advisory stockholder vote on named executive officer compensation is non-binding, the Compensation Committee has considered and expects to continue to consider the outcome of the vote when making future compensation decisions for named executive officers. In determining executive compensation for fiscal year 2017, our Compensation Committee took into account the results of the 2016 Annual Meeting stockholder advisory vote to approve executive compensation, particularly the strong support expressed by our stockholders, as one of the many factors considered in deciding that our compensation policies and procedures for 2017 should largely remain consistent with our policies and procedures in prior years. 40.5 million shares for 0.3 million abstention 6.0 million non-votes.

Role of Executive Officers in the Compensation Process

Management provides recommendations to the Compensation Committee on issues such as compensation program design, and evaluations of executive and our performance. In fiscal year 2017, the Compensation Committee also had access to competitive data collected by management. While the Compensation Committee carefully considers all recommendations made by members of management, ultimate authority for all compensation decisions regarding our executive officers rests with the Compensation Committee and the Board.

Fiscal Year 2017 Named Executive Officer Compensation Components

For fiscal year 2017, the principal components of compensation for our executive officers were:

- Base salary;
- Quarterly bonus; and
- Equity-based incentive compensation.

Base Salary. Base salaries for our executive officers other than the Chief Executive Officer are determined annually by the Compensation Committee based upon recommendations by our Chief Executive Officer, taking into account such factors as salary norms in comparable companies and publicly available data regarding compensation increases in the industry, a subjective assessment of the nature of the position and an annual review of the contribution and experience of each executive officer. For the Chief Executive Officer, the Compensation Committee considers substantially the same type of information, as well as our size and the Chief Executive Officer's overall stock ownership.

In August 2016, the Compensation Committee met to review the base salaries of our named executive officers for fiscal year 2017. In determining base salaries for fiscal year 2017, the Compensation Committee decided to provide no base salary adjustments for our named executive officers.

	Principal Position During Fiscal Year 2017	Fiscal 2016 Base Salary Rate	Fiscal 2017 Base Salary Rate	Base Salary % Change
Charles Liang	President, Chief Executive Officer and Chairman of the Board	\$ 365,160	\$ 365,160	—%
Howard Hideshima	Former Senior Vice President and Chief Financial Officer	\$ 322,023	\$ 322,023	—%
Phidias Chou	Former Senior Vice President, Worldwide Sales	\$ 287,317	\$ 287,317	—%
Yih-Shyan (Wally) Liaw	Former Senior Vice President, International Sales, Corporate Secretary and Director	\$ 233,327	\$ 233,327	—%
Sara Liu	Senior Vice President of Operations, Chief Administrative Officer, Treasurer and Director	\$ 238,156	\$ 238,156	—%

Quarterly Bonus. Our quarterly cash bonus program seeks to motivate executive officers to work effectively to achieve our financial performance objectives and to reward them when such objectives are met. Quarterly bonuses for executive officers are subject to approval by the Compensation Committee. Bonuses are not awarded based upon any specific plan or formula, but are subjectively determined based upon our performance during the quarter and the individual's contributions. Historically these bonuses have ranged from zero to an amount equal to two weeks of base salary. For fiscal year 2017, approximately two weeks of base salary (\$10,000) was granted to Mr. Chou in the aggregate as a one-time bonus in recognition of him reaching his first quarter 2017 sales target. None of the other named executive officers received any quarterly bonuses for fiscal 2017.

Other Bonus. Year-end gifting bonuses of \$650 were granted to each named executive officer under a company-wide program that all employees participated in.

Equity-Based Incentive Compensation. Stock options and other equity-based awards are an important component of the total compensation of executive officers. We believe that equity-based awards align the interests of each executive with those of our stockholders. They also provide executive officers a significant, long-term interest in our success and help retain key executive officers in a competitive market for executive talent. Our 2016 Equity Incentive Plan authorizes the Compensation Committee to grant stock options and other equity-based awards to executive officers. The number of shares owned by, or subject to equity-based awards held by, each executive officer is periodically reviewed and additional awards are considered based upon a generalized assessment of past performance of the executive and the relative holdings of other executive officers. The stock options and restricted stock unit awards granted to executive officers by the Compensation Committee generally vest over periods of four years subject to continued service with our company, and stock options expire no later than ten years from the date of

grant. The stock options and restricted stock unit awards vest as to 25% of the shares on the first anniversary of the vesting commencement date and as to 1/16th of the shares per quarter thereafter.

The Compensation Committee has historically granted equity awards to employees on a two-year cycle. In August 2016, the Compensation Committee approved a grant of 12,500 stock options and 5,630 RSUs to Mr. Hideshima, based on the Compensation Committee's review of all employee grant levels and on the recommendation of the Chief Executive Officer. No equity grants were made to any other named executive officer in fiscal year 2017 as none of the other named executive officers were eligible for a two-year refresh grant in fiscal year 2017.

Stock Ownership Guidelines

Other than as discussed below under "Stock Retention Policy," we currently do not require our directors or executive officers to own a particular amount of our common stock. The Compensation Committee is satisfied that stock and option holdings among our directors and executive officers are sufficient at this time to provide motivation and to align this group's interests with those of our stockholders. Our insider trading policy prohibits any of our directors, executive officers, employees or contractors from engaging in any transactions in publicly-traded options, such as puts and calls, and other derivative securities, including any hedging or similar transaction, with respect to our common stock.

Stock Retention Policy

We have adopted a stock retention policy which requires that our Chief Executive Officer hold a significant portion of the shares of our common stock acquired under our equity incentive plan for at least 36 months. Under the policy, the Chief Executive Officer must retain at least 50% of all "net" shares received ("net" shares mean those shares remaining after the sale or withholding of shares in payment of the exercise price, if applicable, and withholding taxes) for at least 36 months following the date on which an equity award is vested, settled or exercised.

Recoupment Policy

We established a Recoupment Policy that is applicable to our executive officers. Under the policy, if we are required to prepare an accounting restatement due to material noncompliance with the financial reporting requirements under United States securities laws, the Compensation Committee shall be entitled to recover from any current or former executive officer any excess incentive-based compensation received by such person during the three-year period prior to the date on which we are required to prepare the restatement. This policy applies to both equity-based and cash-based incentive compensation awards. The "excess incentive-based compensation" is the difference between the actual amount that was paid, and the amount that would have been paid under the restated financial results.

As indicated in the Explanatory Note, the consolidated financial statements included in this Annual Report on Form 10-K have been restated. The Board of Directors intends to undertake an analysis of whether any excess incentive-based compensation was paid to any of our executive officers or former executive officers. If the Board of Directors determine that any excess incentive-based compensation was paid to executives, the recoupment of the incentive-based compensation would be immaterial.

Other Benefits

Health and Welfare Benefits

Our executive officers receive the same health and welfare benefits as are offered to our other employees, including medical, dental, vision, life, accidental death and dismemberment, disability, flexible spending accounts and holiday pay. The same contribution amounts, percentages and plan design provisions are applicable to all employees.

Retirement Program

Our executive officers may participate in the same tax-qualified, employee-funded 401(k) plan that is offered to all our other employees. We do not maintain a supplemental executive retirement plan, nor do we offer any defined benefit retirement plans to our executive officers.

Perquisites

We do not provide special benefits or other perquisites to any of our named executive officers.

Employment Arrangements, Severance and Change of Control Benefits

We have not entered into employment agreements with any of our named executive officers. Messrs. Hideshima, Chou and Liaw had, and Ms. Liu currently has, a signed offer letter which provides for at-will employment. The offer letter provides for salary, stock options and right to participate in our employee benefit plans. We do not have any written employment arrangements with Mr. Liang. We do not have any arrangements with any of our executive officers that provide for any severance or other benefits in the event of termination or change of control of our company.

Tax and Accounting Treatment of Compensation

In our review and establishment of compensation programs and payments, we consider, but do not place great emphasis on, the anticipated accounting and tax treatment of our compensation programs to us and our executive officers. While we may consider accounting and tax treatment, these factors alone are not dispositive. Among other factors that receive greater consideration are the net costs to us and our ability to effectively administer executive compensation in the short and long-term interests of stockholders.

Section 162(m) of the U.S. Internal Revenue Code of 1986, as amended (the “Code”), generally limits a company’s ability to deduct for tax purposes compensation in excess of \$1.0 million paid in any single tax year to certain executive officers (and, beginning in 2018, certain former executive officers). Prior to what is referred to as the 2017 Tax Reform Act, compensation deemed to be performance-based in accordance with Section 162(m) could be exempt from this \$1.0 million limitation, and compensation paid to the chief financial officer was not subject to the deductibility limitation of Section 162(m). We continue to evaluate the impact of the 2017 Tax Reform Act for its potential impact on our company. Regardless of that impact, however, we will continue to design and maintain executive compensation arrangements that we believe will attract and retain the executive talent that we need to compete successfully, even if in certain cases such compensation is not deductible for federal income tax purposes. In addition, because of the uncertainties associated with the application and interpretation of Section 162(m) and the regulations issued thereunder, there can be no assurance that compensation intended to satisfy the requirements for deductibility under Section 162(m), as in effect prior to 2018, will in fact be deductible.

We account for equity compensation paid to our employees in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 718, Stock-Compensation (“ASC Topic 718”), which requires us to estimate and record expenses for each award of equity compensation over the service period of the award.

We intend that our plans, arrangements and agreements will be structured and administered in a manner that complies with (or is exempt from) the requirements of Section 409A of the Code. Participation in, and compensation paid under, our plans, arrangements and agreements may, in certain instances, result in the deferral of compensation that is subject to the requirements of Section 409A. If our plans, arrangements and agreements as administered fail to meet certain requirements under or exemptions from Section 409A, compensation earned thereunder may be subject to immediate taxation and tax penalties.

Summary

The Committee believes that our compensation philosophy and programs are designed to foster a performance-oriented culture that aligns our executive officers’ interests with those of our stockholders. The Committee also believes that the compensation of our executive officers is both appropriate and responsive to the goal of building stockholder value.

Compensation Committee Report

The Compensation Committee has reviewed and discussed the Compensation Discussion and Analysis (“CD&A”) with our management. Based on this review and these discussions, the Compensation Committee recommended to the Board of Directors that the CD&A be included in this Annual Report on Form 10-K.

This report has been furnished by the Compensation Committee.

Sherman Tuan, Chair
Hwei-Ming (Fred) Tsai
Saria Tseng

Fiscal Year 2017 Summary Compensation Table

The following table sets forth information concerning the compensation earned during the fiscal years ended 2017, 2016 and 2015 of each person who was a named executive officer during fiscal year 2017.

FISCAL YEAR 2017 SUMMARY COMPENSATION TABLE

Name and Principal Position During Fiscal Year 2017	Year	Salary (\$)(1)	Bonus (\$)(2)	Stock Awards (\$)(3)	Option Awards (\$)(4)	Non-Equity Incentive Plan Compensation (\$)	Change in Pension Value and Nonqualified Deferred Compensation Earnings (\$)	All Other Compensation (\$)(5)	Total (\$)
Charles Liang	2017	386,212	\$ 650	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 386,862
<i>President, Chief Executive Officer and Chairman of the Board</i>	2016	363,776	—	—	—	—	—	—	363,776
	2015	367,528	7,607	—	2,607,616	—	—	—	2,982,751
Howard Hideshima	2017	330,681	650	115,640	116,092	—	—	1,500	564,563
<i>Senior Vice President and Chief Financial Officer</i>	2016	322,646	—	—	—	—	—	—	322,646
	2015	315,816	6,990	—	403,580	—	—	—	726,386
Phidias Chou	2017	299,461	10,650	—	—	—	—	—	310,111
<i>Senior Vice President, Worldwide Sales</i>	2016	286,747	3,416	137,160	138,000	—	—	—	565,323
	2015	300,278	6,446	—	—	—	—	—	306,724
Yih-Shyan (Wally) Liaw	2017	246,105	650	—	—	—	—	—	246,755
<i>Senior Vice President, International Sales, Corporate Secretary and Director</i>	2016	232,864	—	109,959	105,089	—	—	—	447,912
	2015	247,271	5,422	—	—	—	—	—	252,693
Sara Liu	2017	244,558	650	—	—	—	—	—	245,208
<i>Senior Vice President and Chief Administrative Officer, Treasurer and Director</i>	2016	237,253	—	110,484	113,961	—	—	—	461,698
	2015	230,546	5,309	—	—	—	—	—	235,855

- (1) Amounts disclosed under "Salary" includes leave pay earned by the named executive officers.
- (2) Amounts disclosed under "Bonus" reflect the discretionary cash bonuses earned by the named executive officers.
- (3) Amounts represent the grant date fair value of restricted stock unit awards calculated in accordance with ASC Topic 718, and are based on the closing market price of our common stock on the date of grant.
- (4) Amounts represent the grant date fair value of each stock option award calculated in accordance with ASC Topic 718, using the Black Scholes option-pricing model. Assumptions used in the calculation of these amounts are included in Part II, Item 8, "Financial Statements and Supplementary Data", and Part II, Item 8, Note 12 "Stock-based Compensation and Stockholders' Equity" to our consolidated financial statements for the fiscal year 2017 included in this Annual Report on Form 10-K.
- (5) Amounts disclosed under "All Other Compensation" reflect payments made by our company in connection with medical and dental benefit waivers.

Fiscal Year 2017 Grants of Plan-Based Awards

The following table provides information concerning all plan-based awards granted during fiscal year 2017 to each person who was a named executive officer during fiscal year 2017. Except for Mr. Hideshima, no other named executive officer received a plan-based award during fiscal year 2017.

FISCAL YEAR 2017 GRANTS OF PLAN-BASED AWARDS

Name	Grant Date	All Other Stock Awards: Number of Shares of Stock or Units (#)	All Other Option Awards: Number of Securities Underlying Options (#)	Exercise or Base Price of Option Awards (\$/Sh)	Grant Date Fair Value of Stock and Option Awards (\$)(1)
Charles Liang	—	—	—	\$ —	\$ —
Howard Hideshima	8/3/2016	5,630 (2)	—	\$ —	\$ 115,640
	8/3/2016	—	12,500 (3)	20.54	116,092
Phidias Chou	—	—	—	\$ —	—
Yih-Shyan (Wally) Liaw	—	—	—	\$ —	—
Sara Liu	—	—	—	\$ —	—

- (1) Represents the fair value of each stock option and restricted stock unit awards as of the date of grant, computed in accordance with ASC Topic 718.
- (2) These time-based restricted stock units generally vest at the rate of 25% on May 22, 2017 and 1/16th per quarter thereafter, such that the underlying shares are expected to be fully vested on May 22, 2020. Any unvested equity awards were forfeited upon termination of employment on January 30, 2018.
- (3) This stock option generally vests at the rate of 25% on May 8, 2017 and 1/16th per quarter thereafter, such that the awards are expected to be fully vested on May 8, 2020. Any unvested equity awards were forfeited upon termination of employment on January 30, 2018.

Outstanding Equity Awards at Fiscal Year-End 2017

The following table provides information concerning the outstanding equity-based awards as of June 30, 2017, held by each person who was a named executive officer for fiscal year 2017, including with respect to stock options, the option exercise price and expiration dates for each award.

Name	Option Awards					Stock Awards		
	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable		Option Exercise Price (\$)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)		Market Value of Shares or Units of Stock That Have Not Vested (\$)(1)
Charles Liang	720,000	—		\$ 10.66	3/4/2019			
	132,000	—		\$ 18.59	4/25/2021			
	231,260	—		\$ 20.70	1/21/2023			
	104,218 (2)	62,532 (2)		\$ 35.07	1/19/2025			
Howard Hideshima	10,886	—		\$ 13.61	8/2/2020			
	56,614	—		\$ 13.61	8/2/2020			
	8,690	—		\$ 12.50	8/6/2022			
	37,810	—		\$ 12.50	8/6/2022			
	5,445 (3)	1,815 (3)		\$ 26.75	8/4/2024			
	20,055 (4)	6,685 (4)		\$ 26.75	8/4/2024			
	1,669 (5)	5,010 (5)		\$ 20.54	8/3/2026			
	1,455 (6)	4,366 (6)		\$ 20.54	8/3/2026			
					4,223 (7)		104,097	
Phidias Chou	6,500	—		\$ 5.53	4/29/2019			
	18,970	—		\$ 8.36	10/26/2019			
	31,030	—		\$ 8.36	10/26/2019			
	6,150	—		\$ 15.22	10/24/2021			
	32,850	—		\$ 15.22	10/24/2021			
	16,150 (8)	1,077 (8)		\$ 14.23	10/21/2023			
	15,724 (9)	1,049 (9)		\$ 14.23	10/21/2023			
	2,129 (10)	2,741 (10)		\$ 25.40	10/21/2025			
	3,118 (11)	4,012 (11)		\$ 25.40	10/21/2025			
						3,375 (12)		83,194
Yih-Shyan (Wally) Liaw	10,635	—		\$ 7.46	4/28/2018			
	10,275	—		\$ 7.46	4/28/2018			
	10,079	—		\$ 13.61	8/2/2020			
	7,671	—		\$ 13.61	8/2/2020			
	8,687	—		\$ 17.29	4/23/2022			
	18,313	—		\$ 17.29	4/23/2022			
	6,127 (13)	1,415 (13)		\$ 18.93	4/21/2024			
	12,559 (14)	2,899 (14)		\$ 18.93	4/21/2024			
	1,596 (15)	3,514 (15)		\$ 28.71	4/27/2026			
	1,058 (16)	2,332 (16)		\$ 28.71	4/27/2026			
					2,873 (17)		70,819	
Sara Liu	19,615	—		\$ 11.81	1/25/2020			
	16,285	—		\$ 11.81	1/25/2020			
	29,000	—		\$ 17.09	1/23/2022			
	20,125 (18)	2,875 (18)		\$ 17.96	1/20/2024			
	3,375 (19)	5,625 (19)		\$ 27.28	1/27/2026			
					2,785 (20)		68,650	

- (1) Represents the closing stock price per share of our common stock as of June 30, 2017 (\$24.65) multiplied by the number of shares underlying RSUs that had not vested as of June 30, 2017.
- (2) Option generally vested at the rate of 25% on November 1, 2015 and 1/16th per quarter thereafter, such that the award is expected to be fully vested on November 1, 2018.
- (3) Option (ISO) generally vested at the rate of 25% on May 8, 2015 and 1/16th per quarter thereafter, such that the award is expected to be fully vested on May 8, 2018. Any unvested equity awards were forfeited upon termination of employment on January 30, 2018.
- (4) Option (NQ) generally vested at the rate of 25% on May 8, 2015 and 1/16th per quarter thereafter, such that the award is expected to be fully vested on May 8, 2018. Any unvested equity awards were forfeited upon termination of employment on January 30, 2018.
- (5) Option (ISO) generally vested at the rate of 25% on May 8, 2017 and 1/16th per quarter thereafter, such that the award is expected to be fully vested on May 8, 2020. Any unvested equity awards were forfeited upon termination of employment on January 30, 2018.
- (6) Option (NQ) generally vested at the rate of 25% on May 8, 2017 and 1/16th per quarter thereafter, such that the award is expected to be fully vested on May 8, 2020. Any unvested equity awards were forfeited upon termination of employment on January 30, 2018.
- (7) RSUs generally vested at the rate of 25% on May 22, 2017 and 1/16th per quarter thereafter, such that the underlying shares are expected to be fully vested on May 22, 2020.
- (8) Option (ISO) generally vested at the rate of 25% on September 13, 2014 and 1/16th per quarter thereafter, such that the award is expected to be fully vested on September 13, 2017.
- (9) Option (NQ) generally vested at the rate of 25% on September 13, 2014 and 1/16th per quarter thereafter, such that the award is expected to be fully vested on September 13, 2017.
- (10) Option (ISO) generally vested at the rate of 25% on September 13, 2016 and 1/16th per quarter thereafter, such that the award is expected to be fully vested on September 13, 2019. Any unvested equity awards were forfeited upon termination of employment on January 30, 2018.
- (11) Option (NQ) generally vested at the rate of 25% on September 13, 2016 and 1/16th per quarter thereafter, such that the award is expected to be fully vested on September 13, 2019. Any unvested equity awards were forfeited upon termination of employment on January 30, 2018.
- (12) RSUs generally vested at the rate of 25% on November 10, 2016 and 1/16th per quarter thereafter, such that the underlying shares are expected to be fully vested on November 10, 2019.
- (13) Option (ISO) generally vested at the rate of 25% on March 30, 2015 and 1/16th per quarter thereafter, such that the award is expected to be fully vested on March 30, 2018. Any unvested equity awards were forfeited upon termination of employment on January 30, 2018.
- (14) Option (NQ) generally vested at the rate of 25% on March 30, 2015 and 1/16th per quarter thereafter, such that the award is expected to be fully vested on March 30, 2018. Any unvested equity awards were forfeited upon termination of employment on January 30, 2018.
- (15) Option (ISO) generally vested at the rate of 25% on March 29, 2017 and 1/16th per quarter thereafter, such that the award is expected to be fully vested on March 29, 2020. Any unvested equity awards were forfeited upon termination of employment on January 30, 2018.
- (16) Option (NQ) generally vested at the rate of 25% on March 29, 2017 and 1/16th per quarter thereafter, such that the award is expected to be fully vested on March 29, 2020. Any unvested equity awards were forfeited upon termination of employment on January 30, 2018.
- (17) RSUs generally vested at the rate of 25% on May 10, 2017 and 1/16th per quarter thereafter, such that the underlying award is expected to be fully vested on May 10, 2020.
- (18) Option generally vested at the rate of 25% on December 12, 2014 and 1/16th per quarter thereafter, such that the award is expected to be fully vested on December 12, 2017.
- (19) Option generally vested at the rate of 25% on December 12, 2016 and 1/16th per quarter thereafter, such that the award is expected to be fully vested on December 12, 2019.
- (20) RSUs generally vested at the rate of 25% on February 10, 2017 and 1/16th per quarter thereafter, such that the award is expected to be fully vested on February 10, 2020.

Option Exercises and Stock Vested During Fiscal Year 2017

The following table sets forth the dollar amounts realized by each person who was a named executive officer during fiscal year 2017 pursuant to the exercise or vesting of equity-based awards during fiscal year 2017.

Name	Option Awards		Stock Awards	
	Number of Shares Acquired on Exercise (#)	Value Realized on Exercise \$(1)	Number of Shares Acquired on Vesting (#)	Value Realized on Vesting \$(2)
Charles Liang	—	\$ —	—	\$ —
Howard Hideshima	63,126	\$ 749,544	1,407	\$ 34,260
Phidias Chou	11,000	\$ 212,554	2,025	\$ 49,392
Sara Liu	25,000	\$ 500,871	1,265	\$ 33,029
Yih-Shyan (Wally) Liaw	20,000	\$ 281,000	957	\$ 23,112

(1) Based on the difference between the sales price of our common stock at the time of exercise and the exercise price.

(2) The value is the closing price of our common stock on the date of vesting, multiplied by the number of shares vested.

Pension and Nonqualified Deferred Compensation

We do not provide any nonqualified deferred compensation arrangements or pension plans. As such, the Pension Benefits disclosure and Nonqualified Deferred Compensation disclosure are omitted from this Annual Report on Form 10-K.

Potential Payments Upon Termination or Change of Control

We do not currently and did not during fiscal year 2017 have any arrangements with any of our executive officers that provide for any severance or other benefits in the event of termination or change of control of our company.

Director Compensation

Under our director compensation policy in effect for fiscal year 2017, we reimburse non-employee directors for reasonable expenses in connection with attendance at Board and committee meetings. Our non-employee directors receive an annual retainer of \$40,000, payable quarterly. In addition, the Chairperson of our Audit Committee receives an additional annual retainer of \$25,000, the Chairperson of each of our Compensation Committee and Nominating and Corporate Governance Committee receives an additional annual retainer of \$5,000 and each director serving in a non-chairperson capacity on our standing Board committees receives an additional annual retainer of \$2,500 per committee, payable quarterly.

Non-employee directors also are eligible to receive stock options under our 2016 Equity Incentive Plan. Under the policy, non-employee directors are granted an initial option to purchase 18,000 shares upon first becoming a member of our Board of Directors. A non-employee director serving as Chairperson of the Audit Committee receives an additional initial grant of an option to purchase 12,000 shares. Non-employee directors serving as Chairperson of the Compensation or Nominating and Corporate Governance Committees receive an additional initial grant of an option to purchase 2,000 shares. Each of these initial options generally vests and becomes exercisable over four years, with the first 25% of the shares subject to each initial option generally vesting on the first anniversary of the date of grant and the remainder generally vesting quarterly thereafter. Immediately after each of our annual meetings of stockholders, each non-employee director is granted an option to purchase 4,500 shares of our common stock, the Audit Committee Chairperson is granted an additional annual option to purchase 3,000 shares of our common stock and the Chairperson of each of the Compensation and Nominating and Corporate Governance Committees is granted an additional annual option to purchase 500 shares of our common stock. These options will vest and become exercisable generally on the first anniversary of the date of grant or immediately prior to our annual meeting of stockholders, if earlier.

The options granted to non-employee directors have a per share exercise price equal to 100% of the fair market value of the underlying shares on the date of grant, and will become fully vested if we undergo a change of control. Annual grants will be reduced proportionally if the person does not serve for the full year after the annual grant.

The following table shows for the fiscal year ended June 30, 2017 certain information with respect to the compensation of all of our non-employee directors who served in such capacity during the fiscal year ended June 30, 2017:

FISCAL YEAR 2017 DIRECTOR COMPENSATION

Name	Fees Earned or Paid in Cash (\$)(1)	Stock Awards (\$)	Option Awards (\$)(2)	Total (\$)
Laura Black	\$ 65,000	—	\$ 83,700	\$ 148,700
Michael McAndrews	\$ 42,500	—	\$ 50,220	\$ 92,720
Hwei-Ming (Fred) Tsai	\$ 50,000	—	\$ 55,800	\$ 105,800
Saria Tseng	\$ 33,750	—	\$ 229,049	\$ 262,799
Sherman Tuan	\$ 47,500	—	\$ 55,800	\$ 103,300

- (1) This column represents annual director fees, non-employee committee chairman fees and other committee member fees earned in fiscal year 2017.
- (2) The dollar amount in this column represents the aggregate grant date fair value of the awards calculated in accordance with FASB ASC Topic 718, using the Black Scholes option-pricing model. On March 1, 2017 each of Ms. Black and Messrs. McAndrews, Tsai and Tuan were granted options to purchase 7,500, 4,500, 5,000 and 5,000 shares, respectively, with the grant date fair values set forth in the table above. In connection with her initial appointment to the Board, on November 4, 2016, Ms. Tseng received an initial option to purchase 18,000 shares with a grant date fair value of \$9.93 and on March 1, 2017 she received an additional option to purchase 4,500 shares with a grant date fair value of \$11.16. Assumptions used in the calculation of the grant date fair value amounts are included in Part II, Item 8, "Financial Statements and Supplementary Data", and Item II, Part 8, Note 12, "Stock-based Compensation and Stockholders' Equity" to our consolidated financial statements for the fiscal year 2017 included in this Annual Report on Form 10-K.

The table below sets forth the aggregate number of shares underlying option awards held by our non-employee directors as of June 30, 2017. None of the non-employee directors held any unvested stock awards as of June 30, 2017.

Name	Option Awards
Laura Black	31,500
Michael McAndrews	27,000
Hwei-Ming (Fred) Tsai	50,000
Saria Tseng	22,500
Sherman Tuan	51,500

Compensation Committee Interlocks and Insider Participation

None of the members of the Compensation Committee is a current or former officer or employee of our company or had any relationship with our company requiring disclosure. In addition, during fiscal year 2017, none of our executive officers served as a member of the Board of Directors or Compensation Committee of any other entity that has one or more executive officers who served on our Board of Directors or Compensation Committee. Saria Tseng, Hwei-Ming (Fred) Tsai and Sherman Tuan served on the Compensation Committee in fiscal year 2017.

Compensation Program Risk Assessment

We have assessed our compensation programs and have concluded that risks arising from our compensation policies and practices are not reasonably likely to have a material adverse effect on us. We concluded that our compensation policies and practices do not encourage excessive or inappropriate risk-taking. We believe our programs are appropriately designed to encourage our employees to make decisions that result in positive short-term and long-term results for our business and our shareholders.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

Security Ownership of Certain Beneficial Owners and Management

The following table sets forth certain information known to us regarding beneficial ownership of our common stock as of March 31, 2019 by:

- Each of the named executive officers during Fiscal Year 2017;
- Each of our directors;
- All directors and executive officers as a group; and
- All person known to us beneficially own 5% or more of our outstanding common stock.

Name and Address of Beneficial Owner(1)	Amount and Nature of Beneficial Ownership(2)	Percent of Common Stock Outstanding(3)
Executive Officers and Directors:		
Charles Liang(4)	8,330,684	16.5%
Howard Hideshima(5)	149,655	*
Phidias Chou(6)	136,247	*
Sara Liu(7)	8,330,684	16.5%
Yih-Shyan (Wally) Liaw(8)	1,721,895	3.4%
Laura Black(9)	31,500	*
Michael S. McAndrews(10)	27,000	*
Hwei-Ming (Fred) Tsai(11)	290,000	*
Saria Tseng(12)	15,750	*
Sherman Tuan(13)	47,650	*
All directors and executive officers as a group (13 persons)(14)	10,802,799	21.1%
5% Holders Not Listed Above:		
Dimensional Fund Advisors (15)	3,355,723	6.7%

*Represents beneficial ownership of less than one percent of the outstanding shares of common stock

- (1) Except as otherwise indicated, to our knowledge the persons named in this table have sole voting and investment power with respect to all shares of Common Stock shown as beneficially owned by them, subject to community property laws applicable and to the information contained in the footnotes to this table.
- (2) Under the SEC rules, a person is deemed to be the beneficial owner of shares that can be acquired by such person within 60 days upon the exercise of options or RSUs subject to vesting.
- (3) Calculated on the basis of 49,881,914 shares of common stock outstanding as of March 31, 2019, provided that any additional shares of Common Stock that a stockholder has the right to acquire within 60 days after March 31, 2019 are deemed to be outstanding for the purposes of calculating that stockholder's percentage of beneficial ownership.
- (4) Includes 612,614 options exercisable within 60 days after March 31, 2019. Also includes 3,175,002 shares jointly held by Mr. Liang and Sara Liu, his spouse, 472,425 shares held directly by Ms. Liu and 95,465 options exercisable or restricted stock units subject to vesting, both within 60 days after March 31, 2019. See footnote 8.
- (5) Includes 148,435 shares issuable upon the exercise of options exercisable within 60 days after March 31, 2019.
- (6) Includes 136,427 shares issuable upon the exercise of options exercisable within 60 days after March 31, 2019.
- (7) Includes 95,465 options exercisable or restricted stock units subject to vesting, both within 60 days after March 31, 2019. Also includes 3,175,002 shares jointly held by Ms. Liu and Mr. Liang, her spouse, 3,969,793 shares held by Charles Liang, Ms. Liu's spouse and 612,614 shares issuable upon the exercise of options held by Mr. Liang and exercisable within 60 days after March 31, 2019. See footnote 4.
- (8) Includes 70,027 shares issuable upon the exercise of options exercisable within 60 days after March 31, 2019. 1,582,597 shares held by Liaw Family Trust, for which Mr. Liaw and his spouse serve as trustees, 24,256 shares held by Mr. Liaw's daughters and 44,177 shares held by Mrs. Liaw.
- (9) Includes 31,500 shares issuable upon the exercise of options exercisable within 60 days after March 31, 2019.
- (10) Includes 27,000 shares issuable upon the exercise of options exercisable within 60 days after March 31, 2019.
- (11) Includes 40,000 shares issuable upon the exercise of options exercisable within 60 days after March 31, 2019.

- (12) Includes 15,750 shares issuable upon the exercise of options exercisable within 60 days after March 31, 2019.
- (13) Includes 40,000 shares issuable upon the exercise of options exercisable within 60 days after March 31, 2019.
- (14) Includes 10,795,299 options exercisable or restricted stock units subject to vesting, both within 60 days after March 31, 2019.
- (15) The information with respect to the holdings of Dimensional Fund Advisors LP ("Dimensional Fund Advisors") is based solely on Schedule 13G filed on February 8, 2019 by Dimensional Fund Advisors. Dimensional Fund Advisors has the sole power to dispose or to direct the disposition of all of such shares. Dimensional Fund Advisors has the sole power to direct the vote of 3,355,723 of such shares. The address for Dimensional Fund Advisors is Building One, 6300 Bee Cave Road, Austin, Texas 78746.

Equity Compensation Plan Information

We currently maintain two compensation plans that provide for the issuance of our Common Stock to officers and other employees, directors and consultants. These consist of the 2006 Equity Incentive Plan and the 2016 Equity Incentive Plan, both of which have been approved by our stockholders. We no longer grant any equity-based awards under the 2006 Equity Incentive Plan. The following table sets forth information regarding outstanding options and RSUs and shares reserved and remaining available for future issuance under the foregoing plans as of June 30, 2017:

<u>Plan Category</u>	Number of securities to be issued upon exercise of outstanding options, warrants and rights (a)(1)	Weighted-average exercise price of outstanding options, warrants and rights (b)(2)(3)	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) (c)
Equity compensation plans approved by security holders	9,602,016	\$ 17.19	2,785,792
Equity compensation plans not approved by security holders	—	—	—
Total	9,602,016	\$ 17.19	2,785,792

- (1) This number includes 8,375,659 shares subject to outstanding options and 1,226,357 shares subject to outstanding RSU awards.
- (2) The weighted average exercise price is calculated based solely on the exercise prices of the outstanding options and does not reflect the shares that will be issued upon the vesting of outstanding awards of RSUs, which have no exercise price.
- (3) The weighted-average remaining contractual term of our outstanding options as of June 30, 2017 was 4.37 years.

Item 13. Certain Relationships and Related Transactions and Director Independence

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS AND DIRECTOR INDEPENDENCE

Procedures for Approval of Related Person Transactions

Pursuant to our Audit Committee charter, the Audit Committee has the responsibility for the review and approval of any related person transactions; provided that if the matter or transaction involves employment or compensation terms for services to our company, including retention or payment provisions relating to expert services, then it is presented to the Compensation Committee. In approving or rejecting a proposed transaction, or a relationship that encompasses many similar transactions, our Audit Committee will consider the relevant facts and circumstances available and deemed relevant, including but not limited to the risks, costs and benefits to us, the terms of the transaction, the availability of other sources for comparable services or products, and, if applicable, the impact on a director's independence. Our Audit Committee approves only those transactions that, in light of known circumstances are not inconsistent with our best interests, as the Audit Committee determines in the good faith exercise of its discretion. In addition, we annually require each of our directors and executive officers to complete a directors' and officers' questionnaire that elicits information about related party transactions as such term is defined by SEC rules and regulations. These procedures are intended to determine whether any such related party transaction impairs the independence of a director or presents a conflict of interest on the part of a director, employee or officer.

Transactions with Related Parties, Promoters and Certain Control Persons

Director and Officer Indemnification

We have entered into agreements to indemnify our directors and executive officers to the fullest extent permitted under Delaware law. In addition, our certificate of incorporation contains provisions limiting the liability of our directors and our bylaws contain provisions requiring us to indemnify our officers and directors.

Equity-Based Awards

Please see the "Grants of Plan-Based Awards" table and the "Director Compensation" table above for information on stock option and restricted stock unit grants to our directors and named executive officers in fiscal year 2017.

Employment Relationships

Hung-Fan (Albert) Liu, who is a brother of Sara Liu, our Co-Founder and Senior Vice President and a director, was employed in our operations organization in San Jose, California. Mr. Liu received a total compensation of approximately \$262,000 in fiscal year 2017. The total compensation includes salary, bonus and equity awards.

Shao Fen (Carly) Kao, who is a sister-in-law of Sara Liu, our Co-Founder and Senior Vice President and a director, was employed in our finance and accounting organization in San Jose, California. Ms. Kao received total compensation of approximately \$122,000 in fiscal year 2017. The total compensation includes salary, bonus and equity awards.

Transactions with Ablecom and Compuware

We have entered into a series of agreements with Ablecom Technology Inc. ("Ablecom"), a Taiwan corporation, and one of its affiliates, Compuware Technology, Inc ("Compuware"). Ablecom's ownership of Compuware is below 50% but Compuware remains a related party as Ablecom still has significant influence over the operations. Ablecom's Chief Executive Officer, Steve Liang, is the brother of Charles Liang, our President, Chief Executive Officer and Chairman of the Board of Directors, and owns approximately 0.4% of our common stock. Charles Liang served as a Director of Ablecom during our fiscal 2006, but is no longer serving in such capacity. In addition, Charles Liang and Sara Liu, his spouse, who is also an officer and director of ours, collectively own approximately 10.5% of Ablecom's capital stock, while Steve Liang and other family members owned approximately 36.0% and 36.0% of Ablecom at June 30, 2017 and 2016, respectively. Bill Liang, a brother of both Charles Liang and Steve Liang, also is a member of the Board of Directors of Ablecom. Bill Liang is also the Chief Executive Officer of Compuware, a member of Compuware's Board of Directors and a holder of a significant equity interest in Compuware. Steve Liang is also a member of Compuware's Board of Directors and is an equity holder of Compuware. None of the Company, Charles Liang or Sara Liu own any capital stock of Compuware.

We have a series of agreements with Ablecom, including multiple product development, production and service agreements, product manufacturing agreements, manufacturing services agreements and lease agreements for warehouse space.

Under these agreements, we outsource a portion of our design activities and a significant part of our manufacturing of components such as server chassis to Ablecom. Ablecom agrees to design products according to our specifications. Additionally, Ablecom agrees to build the tools needed to manufacture the products. We have agreed to pay for the cost of chassis and related product tooling and engineering services and will pay for those items when the work has been completed.

We entered into a distribution agreement with Compuware, under which we appointed Compuware as a non-exclusive distributor of our products in Taiwan, China and Australia. We believe that the pricing and terms under the distribution agreement are similar to the pricing and terms of distribution arrangements we have with similar third-party distributors.

We have also entered into a series of agreements with Compuware, including a multiple product development, production and service agreements, product manufacturing agreements, and lease agreements for office space. Under these agreements, we outsource to Compuware a portion of our design activities and a significant part of our manufacturing of components, particularly power supplies. With respect to design activities, Compuware generally agrees to design certain agreed-upon products according to our specifications, and further agrees to build the tools needed to manufacture the products. We pay Compuware for the design and engineering services, and further agree to pay Compuware for the tooling.

We retain full ownership of any intellectual property resulting from the design of these products and tooling. With respect to the manufacturing aspects of the relationship, Compuware purchases most of materials needed to manufacture the power supplies from outside markets and uses these materials to manufacture the products and then sell to us. We review and frequently negotiate with Compuware the prices of the power supplies the we purchase from Compuware. Compuware also manufactures motherboards, backplanes and other components used on our printed circuit boards. We sell to Compuware most of the components needed to manufacture the above products. Compuware uses these components to manufacture and then sells back the products to us at a purchase price equal to the price at which we sold the components to Compuware, plus a "manufacturing value added" fee and other miscellaneous material charges and costs. We frequently review and negotiate with Compuware the amount of the "manufacturing value added" fee that will be included in the price of the products we purchase from Compuware.

Ablecom's sales to us comprise a substantial majority of Ablecom's net sales. For fiscal years ended June 30, 2017, 2016 and 2015, we purchased products from Ablecom totaling \$118.5 million, \$117.6 million and \$123.1 million, respectively. Amounts owed to Ablecom by us as of June 30, 2017 and 2016, were \$30.8 million and \$29.8 million, respectively. For the fiscal years ended June 30, 2017, 2016 and 2015, we paid Ablecom \$5.2 million, \$7.8 million and \$4.9 million, respectively, for design services, tooling assets and miscellaneous costs.

Compuware's sales of our products to others comprise a majority of Compuware's net sales. For fiscal years ended June 30, 2017, 2016 and 2015, we sold products to Compuware totaling \$23.0 million, \$29.1 million and \$47.6 million, respectively. Amounts owed to us by Compuware as of June 30, 2017 and 2016, were \$7.9 million and \$3.7 million, respectively. The price at which Compuware purchases the products from us is at a discount from our standard price for purchasers who purchase specified volumes from us. In exchange for this discount, Compuware assumes the responsibility to install our products at the site of the end customer and administers first-level customer support. For the fiscal years ended June 30, 2017, 2016 and 2015, we purchased products from Compuware totaling \$117.5 million, \$125.0 million and \$104.6 million, respectively. Amounts we owed to Compuware as of June 30, 2017 and 2016, were \$32.2 million and \$20.5 million, respectively. For the fiscal years ended June 30, 2017, 2016 and 2015, we paid Compuware \$1.4 million, \$1.1 million and \$0.8 million, respectively, for design services, tooling assets and miscellaneous costs.

Our exposure to financial loss as a result of our involvement with Ablecom is limited to potential losses on our purchase orders in the event of an unforeseen decline in the market price and/or demand for our products such that we incur a loss on the sale or cannot sell the products. Our outstanding purchase orders to Ablecom were \$23.5 million and \$22.8 million at June 30, 2017 and 2016, respectively, representing the maximum exposure to financial loss. We do not directly or indirectly guarantee any obligations of Ablecom, or any losses that the equity holders of Ablecom may suffer.

Our exposure to financial loss as a result of our involvement with Compuware is limited to potential losses on our purchase orders in the event of an unforeseen decline in the market price and/or demand for our products such that we incur a loss on the sale or cannot sell the products. Our outstanding purchase orders to Compuware were \$56.4 million and \$40.0 million at June 30, 2017 and 2016, respectively, representing the maximum exposure to financial loss. We do not directly or indirectly guarantee any obligations of Compuware, or any losses that the equity holders of Compuware may suffer.

Item 14. Principal Accounting Fees and Services

The Audit Committee appointed Deloitte & Touche LLP as our independent registered public accounting firm for the fiscal year 2017.

Independent Registered Public Accounting Firm Fees and Services

The following table sets forth the aggregate audit fees billed to us by our independent registered public accounting firm, Deloitte & Touche LLP, the member firms of Deloitte Touche Tohmatsu, and their respective affiliates (collectively, “Deloitte”), and fees paid to Deloitte for services in the fee categories indicated below for the fiscal years 2017 and 2016. The Audit Committee has considered the scope and fee arrangements for all services provided by Deloitte, taking into account whether the provision of non-audit services is compatible with maintaining Deloitte’s independence, and has pre-approved the services described below.

	Fiscal Year Ended	
	June 30, 2017	June 30, 2016
Audit Fees(1)	\$ 22,259,000	\$ 2,427,000
Audit-Related Fees	—	—
Tax Fees	—	—
All Other Fees	2,000	—
Total	\$ 22,261,000	\$ 2,427,000

(1) Audit fees consist of the aggregate fees for professional services rendered for the audit of our consolidated financial statements, review of interim condensed consolidated financial statements and certain statutory audits.

Audit Committee Pre-Approval Policies and Procedures

The Audit Committee has determined that all services performed by Deloitte & Touche LLP are compatible with maintaining the independence of Deloitte & Touche LLP. The Audit Committee’s policy on approval of services performed by the independent registered public accounting firm is to pre-approve all audit and permissible non-audit services to be provided by the independent registered public accounting firm during the fiscal year. The Audit Committee reviews each non-audit service to be provided and assesses the impact of the service on the firm’s independence.

PART IV

Item 15. Exhibits and Financial Statement Schedules

(a) 1. Financial Statements

See Index to consolidated financial statements in Part II, Item 8 of this Annual Report on Form 10-K, which is incorporated herein by reference.

2. Financial Statement Schedules

All financial statement schedules have been omitted because they are either not applicable or the required information is shown in the consolidated financial statements or notes thereto.

3. Exhibits

See the Exhibit Index which precedes the signature page of this Annual Report on Form 10-K, which is incorporated herein by reference.

(b) Exhibits

See Item 15(a)(3) above.

(c) *Financial Statement Schedules*

See Item 15(a)(2) above.

EXHIBIT INDEX

Exhibit Number	Description
3.3	Amended and Restated Certificate of Incorporation of Super Micro Computer, Inc.(1)
3.4	Amended and Restated Bylaws of Super Micro Computer, Inc.(1)
4.1	Specimen Stock Certificate for Shares of Common Stock of Super Micro Computer, Inc.(1)
10.1*	Amended 1998 Stock Option Plan(1)
10.2*	Form of Incentive Stock Option Agreement under 1998 Stock Option Plan(1)
10.3*	Form of Nonstatutory Stock Option Agreement under 1998 Stock Option Plan(1)
10.4*	Form of Nonstatutory Stock Option Agreement outside the 1998 Stock Option Plan(1)
10.5*	2006 Equity Incentive Plan(1)
10.6*	Form of Option Agreement under Super Micro Computer, Inc. 2006 Equity Incentive Plan(1)
10.7*	Form of Restricted Stock Agreement under Super Micro Computer, Inc. 2006 Equity Incentive Plan(1)
10.8*	Form of Restricted Stock Unit Agreement under Super Micro Computer, Inc. 2006 Equity Incentive Plan(1)
10.9*	Form of Directors' and Officers' Indemnity Agreement(1)
10.10*	Offer Letter for Sara Liu(1)
10.11*	Offer Letter for Alex Hsu(1)
10.12*	Offer Letter for Howard Hideshima(1)
10.13*	Director Compensation Policy(1)
10.14	Product Manufacturing Agreement dated January 8, 2007 between Super Micro Computer, Inc. and Ablecom Technology Inc.(1)
10.15*	Form of Notice of Grant of Stock Option under 2006 Equity Incentive Plan(2)
10.16*	Form of Notice of Grant of Restricted Stock under 2006 Equity Incentive Plan(2)
10.17*	Form of Notice of Grant of Restricted Stock Unit under 2006 Equity Incentive Plan(2)
10.18	Agreement of Purchase and Sale(3)
10.19*	Stock Option Exercise Notice and Restricted Stock Purchase Agreement—Charles Liang(4)
10.20*	Stock Option Exercise Notice and Restricted Stock Purchase Agreement—Sara Liu (5)
10.21*	Stock Option Exercise Notice and Restricted Stock Purchase Agreement—Shiow-Meei Liaw(5)
10.22	Agreement of Purchase and Sale of Properties on Fox Lane and Fox Drive, San Jose, California(6)
10.23	Business Loan Agreement dated as of June 17, 2010, by and between Super Micro Computer, Inc. and Bank of America(7)
10.24	Amendment No.1 to Loan Agreement, dated August 15, 2011 between Super Micro Computer, Inc. and Bank of America (9)
10.25	Amendment No. 2 to Loan Agreement, dated October 4, 2011 between Super Micro Computer, Inc. and Bank of America (9)
10.26*	2006 Equity Incentive Plan, as amended(8)
10.27	Purchase and Sale Agreement on Ridder Park Drive, San Jose, California(10)
10.28	Addendum 1 to Purchase and Sale Agreement on Ridder Park Drive, San Jose, California(10)
10.29	Amendment No. 3 to Loan Agreement, dated September 30, 2013 between Super Micro Computer, Inc. and Bank of America(11)
10.30	Summary of Credit Facility, dated November 5, 2013 between Super Micro Computer, Inc. and CTBC Bank (11)

[Table of Contents](#)

10.31	Extension of Loan Agreement with Bank of America, N.A., dated November 13, 2014(12)
10.32	Summary of Credit Facility, dated December 1, 2014 between Super Micro Computer, Inc. and CTBC Bank (12)
10.33	Amendment No. 4 to Loan Agreement, dated June 19, 2015 between Super Micro Computer, Inc. and Bank of America(13)
10.34	Extension of Loan Agreement with Bank of America, N.A., dated November 13, 2015(14)
10.35	Extension of Credit Agreement with CTBC Bank dated January 29, 2016(15)
10.36*	2016 Equity Incentive Plan(16)
10.37*	Form of Notice of Grant of Stock Option under 2016 Equity Incentive Plan(17)
10.38*	Form of Stock Option Agreement Under 2016 Equity Incentive Plan(17)
10.39*	Form of Notice of Grant of Restricted Stock Units under 2016 Equity Incentive Plan(17)
10.40*	Form of Restricted Stock Units Agreement under 2016 Equity Incentive Plan(17)
10.41	Extension of Loan Agreement with Bank of America, N.A., dated March 14, 2016(18)
10.42	Extension of Loan Agreement with Bank of America, N.A., dated April 26, 2016(18)
10.43	Summary of Credit Facility, dated April 1, 2016 between Super Micro Computer, Inc. and CTBC Bank(18)
10.44	Extension of Loan Agreement with Bank of America, N.A., dated May 27, 2016(19)
10.45	Credit Agreement dated as of June 30, 2016 between Super Micro Computer, Inc. and Bank of America(19)
10.46	Second Amendment to Credit Agreement with Bank of America, N.A. dated May 5, 2017(20)
10.47+	Summary of Credit Facilities with CTBC Bank dated May 8, 2017
10.48	Extension of Credit Agreement with Bank of America, N.A., dated October 28, 2017(21)
10.49	Extension of Credit Agreement with Bank of America, N.A., dated January 12, 2018(22)
10.50	Third Amendment to Credit Agreement with Bank of America, N.A., dated March 12, 2018(23)
10.51+	Loan and Security Agreement with Bank of America, N.A., dated April 19, 2018
10.52	Extension of Loan and Security Agreement with Bank of America, N.A., dated September 7, 2018(24)
10.53+	Summary of Credit Facilities with CTBC Bank dated January 17, 2018 and Extension letters dated on April 29, 2018
14.1	Code of Business Conduct and Ethics (25)
21.1	Subsidiaries of Super Micro Computer, Inc.(15)
24.1+	Power of Attorney (included in signature pages)
31.1+	Certification of Charles Liang, President and CEO Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2+	Certification of Kevin Bauer, CFO and Secretary Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1+	Certification of Charles Liang, President and CEO Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002(26)
32.2+	Certification of Kevin Bauer, CFO and Secretary Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002(26)
101.INS+	XBRL Instance Document
101.SCH+	XBRL Taxonomy Extension Schema Document
101.CAL+	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF+	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB+	XBRL Taxonomy Extension Label Linkbase Document
101.PRE+	XBRL Taxonomy Extension Presentation Linkbase Document

+ Filed herewith

(1) Incorporated by reference to the same number exhibit filed with the Registrant’s Registration Statement on Form S-1 (Registration No. 333-138370), declared effective by the Securities and Exchange Commission on March 28, 2007.

(2) Incorporated by reference to the Company’s Registration Statement on Form S-8 (Commission File No. 333-142404) filed with the Securities and Exchange Commission on April 27, 2007.

(3) Incorporated by reference to Exhibit 10.1 from the Company’s Current Report on Form 8-K (Commission File No. 001-33383) filed with the Securities and Exchange Commission on June 29, 2007.

[Table of Contents](#)

- (4) Incorporated by reference to the Company's Annual Report on Form 10-K (Commission File No. 001-33383) filed with the Securities and Exchange Commission on September 2, 2008.
 - (5) Incorporated by reference to the Company's Current Report on Form 8-K (Commission File No. 001-33383) filed with the Securities and Exchange Commission on December 2, 2008.
 - (6) Incorporated by reference to the Company's Quarterly Report on Form 10-Q (Commission File No. 001-33383) filed with the Securities and Exchange Commission on May 7, 2010.
 - (7) Incorporated by reference to Exhibit 10.34 from the Company's Annual Report on Form 10-K (Commission File No. 001-33383) filed with the Securities and Exchange Commission on September 7, 2010.
 - (8) Incorporated by reference to Appendix A from the Company's Definitive Proxy Statement on Schedule 14A (Commission File No. 001-33383) filed with the Securities and Exchange Commission on January 18, 2011.
 - (9) Incorporated by reference to the Company's Quarterly Report on Form 10-Q (Commission File No. 001-33383) filed with the Securities and Exchange Commission on November 7, 2011.
 - (10) Incorporated by reference to the Company's Current Report on Form 8-K (Commission File No. 001-33383) filed with the Securities and Exchange Commission on September 24, 2013.
 - (11) Incorporated by reference to the Company's Quarterly Report on Form 10-Q (Commission File No. 001-33383) filed with the Securities and Exchange Commission on November 7, 2013.
 - (12) Incorporated by reference to the Company's Quarterly Report on Form 10-Q (Commission File No. 001-33383) filed with the Securities and Exchange Commission on February 9, 2015.
 - (13) Incorporated by reference to the Company's Annual Report on Form 10-K (Commission File No. 001-33383) filed with the Securities and Exchange Commission on September 10, 2015.
 - (14) Incorporated by reference to the Company's Quarterly Report on Form 10-Q (Commission File No. 001-33383) filed with the Securities and Exchange Commission on November 16, 2015.
 - (15) Incorporated by reference to the Company's Quarterly Report on Form 10-Q (Commission File No. 001-33383) filed with the Securities and Exchange Commission on February 4, 2016.
 - (16) Incorporated by reference to the Company's Current Report on Form 8-K (Commission File No. 001-33383) filed with the Securities and Exchange Commission on March 14, 2016.
 - (17) Incorporated by reference to the Company's Form S-8 (Commission File No. 333-210881) filed with the Securities and Exchange Commission on April 22, 2016.
 - (18) Incorporated by reference to the Company's Quarterly Report on Form 10-Q (Commission File No. 001-33383) filed with the Securities and Exchange Commission on May 6, 2016.
 - (19) Incorporated by reference to the Company's Annual Report on Form 10-K (Commission File No. 001-33383) filed with the Securities and Exchange Commission on August 26, 2016.
 - (20) Incorporated by reference to the Company's Quarterly Report on Form 10-Q (Commission File No. 001-33383) filed with the Securities and Exchange Commission on May 10, 2017.
 - (21) Incorporated by reference to Exhibit 10.1 from the Company's Current Report on 8-K (Commission File No. 001-33383) filed with the Securities and Exchange Commission on October 31, 2017.
 - (22) Incorporated by reference to Exhibit 10.1 from the Company's Current Report on 8-K (Commission File No. 001-33383) filed with the Securities and Exchange Commission on January 17, 2018.
 - (23) Incorporated by reference to Exhibit 10.1 from the Company's Current Report on 8-K (Commission File No. 001-33383) filed with the Securities and Exchange Commission on March 13, 2018.
 - (24) Incorporated by reference to Exhibit 10.1 from the Company's Current Report on 8-K (Commission File No. 001-33383) filed with the Securities and Exchange Commission on September 12, 2018.
 - (25) Incorporated by reference to Exhibit 10.1 from the Company's Current Report on 8-K (Commission File No. 001-33383) filed with the Securities and Exchange Commission on February 5, 2019.
 - (26) The certifications attached as Exhibit 32.1 and 32.2 accompany the Annual Report on Form 10-K pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not be deemed "filed" by Super Micro Computer, Inc. for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.
- * Management contract, or compensatory plan or arrangement

Item 16. Form 10-K Summary

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

SUPER MICRO COMPUTER, INC.

Date: May 16, 2019

/s/ CHARLES LIANG

Charles Liang
President, Chief Executive Officer and Chairman of the
Board
(Principal Executive Officer)

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Charles Liang and Kevin Bauer, jointly and severally, his attorney-in-fact, each with the full power of substitution, for such person, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might do or could do in person hereby ratifying and confirming all that each of said attorneys-in-fact and agents, or his substitute, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities indicated and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ CHARLES LIANG</u> Charles Liang	President, Chief Executive Officer and Chairman of the Board (Principal Executive Officer)	May 16, 2019
<u>/s/ KEVIN BAUER</u> Kevin Bauer	Senior Vice President, Chief Financial Officer (Principal Financial and Accounting Officer)	May 16, 2019
<u>/s/ SARA LIU</u> Sara Liu	Director	May 16, 2019
<u>/s/ LAURA BLACK</u> Laura Black	Director	May 16, 2019
<u>/s/ MICHAEL S. MCANDREWS</u> Michael S. McAndrews	Director	May 16, 2019
<u>/s/ HWEI-MING (FRED) TSAI</u> Hwei-Ming (Fred) Tsai	Director	May 16, 2019
<u>/s/ SARIA TSENG</u> Saria Tseng	Director	May 16, 2019
<u>/s/ SHERMAN TUAN</u> Sherman Tuan	Director	May 16, 2019
<u>/s/ TALLY LIU</u> Tally Liu	Director	May 16, 2019



PRIVATE & CONFIDENTIAL

8 May 2017

ATTENTION: SUPER MICRO COMPUTER TAIWAN, INC.

RE: The Summary of Credit Facilities

According to Super Micro's needs of debt finance, CTBC Bank CO., LTD. would like to propose the indicative bank facilities and terms below

Product Type	Proposed Line Amount	Tenor	Proposed Rate	Notes
Short Term Loan / Guarantee	NTD700M/ NTD100M	1 Year	11+0.25%/ 5‰ annually	1. Collateral: Bade factory 2. Guarantee line is included in Short Term Loan.
Export O/A loan	USD50M	1 Year	Bargaining Rate	1. Clean loan 2. Drawdown Tenor: 120 Days 3. O/A list is required upon drawdown. 4. 80% of invoice amount can be financed.
Total Cap	USD50M			

Bargaining Rate:

- 1M COF+0.40%: repay by the end of each quarter (Mar 31, Jun 30, Sep 30, Dec 31)
- 1M COF+0.45%: Drawdown cross quarter

COF: CTBC Bank's cost of USD fund

I1: CTBC Bank's cost of NTD fund

Collateral:

- Bade factory: Mortgaged amount increased from NTD840M to NTD1,160M.

Terms:

- Shared revolving line of credit facility of USD50M for SUPER MICRO COMPUTER TAIWAN, INC. and SUPER MICRO COMPUTER, B.V.
- Tenor: From 8 May 2017 to 30 April 2018



Yours Faithfully,
For and on behalf of
CTBC BANK CO., LTD.

中國信託商業銀行(股)公司 CTBC Bank Co., Ltd.

11568 臺北市南港區經貿二路168號 No.168, Jingmao 2nd Rd., Nangang Dist., Taipei City 11568, Taiwan, R.O.C.

Tel: 886-2-3327-7777



PRIVATE & CONFIDENTIAL

8 May 2017

ATTENTION: SUPER MICRO COMPUTER, B.V.

RE: The Summary of Credit Facility

According to Super Micro's needs of debt finance, CTBC Bank CO., LTD. would like to propose the indicative bank facility and terms below

Product Type	Proposed Line amount	Tenor	Proposed Rate	Notes
Export O/A loan	USD50M	1 Year	Bargaining Rate	1. Clean loan 2. Drawdown Tenor: 120 Days 3. O/A list is required upon drawdown. 4. 80% of invoice amount can be financed.

Bargaining Rate:

- 1M COF+0.40%: repay by the end of each quarter (Mar 31, Jun 30, Sep 30, Dec 31)

- 1M COF+0.45%: Drawdown cross quarter

COF: CTBC BANK's cost of USD fund.

Guarantor:

- SUPER MICRO COMPUTER TAIWAN, INC.

Terms:

- Shared revolving line of credit facility of USD50M for SUPER MICRO COMPUTER TAIWAN, INC. and SUPER MICRO COMPUTER, B.V.

- Tenor: from 8 May 2017 to 30 April 2018



Yours faithfully,
For and on behalf of
CTBC BANK CO., LTD.

中國信託商業銀行(股)公司 CTBC Bank Co., Ltd.

11568 臺北市南港區經貿二路168號 No.168, Jingmao 2nd Rd., Nangang Dist., Taipei City 11568, Taiwan, R.O.C.

Tel: 886-2-3327-7777

LOAN AND SECURITY AGREEMENT

Dated as of April 19, 2018

SUPER MICRO COMPUTER, INC.,

as U.S. Borrower,

SUPER MICRO COMPUTER B.V.,

as Dutch Borrower

BANK OF AMERICA, N.A.,

as Agent

BANK OF AMERICA, N.A.,

as Sole Lead Arranger, Sole Bookrunner

ING CAPITAL LLC,

as Syndication Agent,

EAST WEST BANK,

as Documentation Agent

TABLE OF CONTENTS

Page

SECTION 1. DEFINITIONS; RULES OF CONSTRUCTION 1

- 1.1 Definitions 1
- 1.2 Accounting Terms 35
- 1.3 Uniform Commercial Code 35
- 1.4 Certain Matters of Construction 35
- 1.5 Currency Equivalents. 36
- 1.6 Dutch Terms 37

SECTION 2. CREDIT FACILITIES 38

- 2.1 Revolver Commitment. 38
- 2.2 Reallocation of Revolver Commitments. 41
- 2.3 Letter of Credit Facility. 42

SECTION 3. INTEREST, FEES AND CHARGES 45

- 3.1 Interest. 45
- 3.2 Fees. 46
- 3.3 Computation of Interest, Fees, Yield Protection 47
- 3.4 Reimbursement Obligations 47
- 3.5 Illegality 48
- 3.6 Inability to Determine Rates 48
- 3.7 Increased Costs; Capital Adequacy. 48
- 3.8 Mitigation 50
- 3.9 Funding Losses 50
- 3.10 Maximum Interest 50

SECTION 4. LOAN ADMINISTRATION 51

- 4.1 Manner of Borrowing and Funding Revolver Loans. 51
- 4.2 Defaulting Lender 53
- 4.3 Reserved 53
- 4.4 Borrower Agent 53
- 4.5 One Obligation 54
- 4.6 Effect of Termination 54

SECTION 5. PAYMENTS 54

TABLE OF CONTENTS

(continued)

5.1	General Payment Provisions	54
5.2	Repayment of Revolver Loans	55
5.3	Reserved.	55
5.4	Payment of Other Obligations	55
5.5	Marshaling; Payments Set Aside	55
5.6	Application and Allocation of Payments.	55
5.7	Dominion Account	58
5.8	Account Stated	58
5.9	Taxes.	58
5.10	Lender Tax Information.	61
5.11	Nature and Extent of Each Borrower's Liability.	62
5.12	Currency Matters	66
SECTION 6. CONDITIONS PRECEDENT 67		
6.1	Conditions Precedent to Initial U.S. Revolver Loans	67
6.2	Conditions Precedent to Initial Dutch Revolver Loans	68
6.3	Conditions Precedent to All Credit Extensions	70
6.4	Post-Closing Requirements	71
SECTION 7. COLLATERAL 71		
7.1	Grant of Security Interest	71
7.2	Lien on Deposit Accounts; Cash Collateral.	74
7.3	Real Estate Collateral.	74
7.4	Other Collateral.	74
7.5	Limitations	75
7.6	Further Assurances	75
SECTION 8. COLLATERAL ADMINISTRATION 75		
8.1	Borrowing Base Reports	75
8.2	Accounts.	76
8.3	Inventory.	77
8.4	Equipment.	78
8.5	Deposit Accounts	78
8.6	General Provisions.	79

TABLE OF CONTENTS

(continued)

8.7 Power of Attorney 80

SECTION 9. REPRESENTATIONS AND WARRANTIES 81

9.1 General Representations and Warranties 81

9.2 Complete Disclosure 87

SECTION 10. COVENANTS AND CONTINUING AGREEMENTS 87

10.1 Affirmative Covenants 87

10.2 Negative Covenants 91

10.3 Financial Covenants 95

SECTION 11. EVENTS OF DEFAULT; REMEDIES ON DEFAULT 95

11.1 Events of Default 95

11.2 Remedies upon Default 97

11.3 License 98

11.4 Setoff 98

11.5 Remedies Cumulative; No Waiver. 98

SECTION 12. AGENT 99

12.1 Appointment, Authority and Duties of Agent. 99

12.2 Agreements Regarding Collateral and Borrower Materials. 100

12.3 Reliance By Agent 101

12.4 Action Upon Default 101

12.5 Ratable Sharing 101

12.6 Indemnification 101

12.7 Limitation on Responsibilities of Agent 102

12.8 Successor Agent and Co-Agents. 102

12.9 Due Diligence and Non-Reliance 103

12.10 Remittance of Payments and Collections. 103

12.11 Individual Capacities 104

12.12 Titles 104

12.13 Bank Product Providers 104

12.14 No Third Party Beneficiaries 104

12.15 Appointment of Agent as security trustee for U.K. Security Documents 104

12.16 Parallel Debt Undertaking. 108

TABLE OF CONTENTS

(continued)

SECTION 13. BENEFIT OF AGREEMENT; ASSIGNMENTS 109

- 13.1 Successors and Assigns 109
- 13.2 Participations. 110
- 13.3 Assignments. 111
- 13.4 Replacement of Certain Lenders 112
- 13.5 Disqualified Institutions. 112

SECTION 14. MISCELLANEOUS 113

- 14.1 Consents, Amendments and Waivers. 113
- 14.2 Indemnity 115
- 14.3 Notices and Communications. 115
- 14.4 Performance of Borrowers' Obligations 116
- 14.5 Credit Inquiries 116
- 14.6 Severability 116
- 14.7 Cumulative Effect; Conflict of Terms 117
- 14.8 Counterparts; Execution 117
- 14.9 Entire Agreement 117
- 14.10 Relationship with Lenders 117
- 14.11 No Advisory or Fiduciary Responsibility 117
- 14.12 Confidentiality 118
- 14.13 Reserved. 118
- 14.14 Reserved. 118
- 14.15 GOVERNING LAW 118
- 14.16 Consent to Forum; Bail-In of EEA Financial Institutions. 118
- 14.17 Waivers by Borrowers 119
- 14.18 Patriot Act Notice 120
- 14.19 NO ORAL AGREEMENT 120

LIST OF EXHIBITS AND SCHEDULES

- Exhibit A Assignment
- Exhibit B Assignment Notice

- Schedule 1.1 Revolver Commitments of Lenders
- Schedule 7.3 Real Estate

Schedule 8.5	Deposit Accounts
Schedule 8.6.1	Business Locations
Schedule 9.1.4	Names and Capital Structure
Schedule 9.1.5	Real Property in a Special Flood Hazard Zone
Schedule 9.1.11	Patents, Trademarks, Copyrights and Licenses
Schedule 9.1.14	Environmental Matters
Schedule 9.1.15	Restrictive Agreements
Schedule 9.1.16	Litigation
Schedule 9.1.20	Labor Contracts
Schedule 10.2.2	Existing Liens
Schedule 10.2.17	Existing Affiliate Transactions

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT is dated as of April 19, 2018, among **SUPER MICRO COMPUTER, INC.**, a Delaware corporation ("SMCI", together with any other party joined hereto after the U.S. Closing Date as a "U.S. Borrower", individually, each a "U.S. Borrower" and collectively, the "U.S. Borrowers"), upon the Dutch Closing Date (as defined below), **SUPER MICRO COMPUTER B.V.**, a private limited liability company formed under the laws of the Netherlands and registered with the Trade Register of the Dutch Chamber of Commerce under number 17102792 ("SMCLBV", together with any other party joined hereto after the Dutch Closing Date as a "Dutch Borrower", individually, each a "Dutch Borrower" and collectively, the "Dutch Borrowers", and together with U.S. Borrowers, individually, a "Borrower" and, collectively, the "Borrowers"), the financial institutions party to this Agreement from time to time as Lenders, and **BANK OF AMERICA, N.A.**, a national banking association ("Bank of America"), as administrative agent for the Lenders (in such capacity, "Agent").

RECITALS:

WHEREAS, Dutch Borrowers have requested that Dutch Lenders provide a credit facility to Dutch Borrowers to finance their mutual and collective business enterprise. Dutch Lenders are willing to provide the credit facility on the terms and conditions set forth in this Agreement.

WHEREAS, U.S. Borrowers have requested that U.S. Lenders provide a credit facility to U.S. Borrowers to finance their mutual and collective business enterprise. U.S. Lenders are willing to provide the credit facility on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for valuable consideration hereby acknowledged, the parties agree as follows:

SECTION 1. DEFINITIONS; RULES OF CONSTRUCTION

1.1 Definitions. As used herein, the following terms have the meanings set forth below:

Account Debtor Approved Countries: shall mean the United States, Canada, the Netherlands, Germany, France, the United Kingdom, Spain, Italy, Portugal, Australia, Hong Kong, New Zealand, Finland, Sweden, Norway, Belgium, Luxemburg, Ireland, Singapore, Switzerland, in each case together with any state or province or territory thereof (as applicable); provided, that, the Agent may, in its Permitted Discretion and as a condition to such jurisdiction remaining an Account Debtor Approved Country, require that Borrowers provide local law security documentation in respect of Accounts of Account Debtors organized outside of the jurisdiction of organization of such Borrowers to ensure that the Agent has a duly perfected and enforceable Lien under the applicable law of such jurisdiction; further provided, that Agent may add to or remove from the above list any countries in its Permitted Discretion.

Acquisition: a transaction or series of transactions resulting in (a) acquisition of a business, division or substantially all assets of a Person; (b) record or beneficial ownership of 50% or more of the Equity Interests of a Person; or (c) merger, consolidation or combination of a Borrower or Subsidiary with another Person.

Affiliate: with respect to a specified Person, any other Person that directly, or indirectly through intermediaries, Controls, is Controlled by or is under common Control with the specified Person.

Agent Indemnitees: Agent and its officers, directors, employees, Affiliates, agents and attorneys.

Agent Professionals: attorneys, accountants, appraisers, auditors, business valuation experts, environmental engineers or consultants, turnaround consultants, and other professionals and experts retained by Agent.

Agreement Currency: as defined in **Section 1.5**.

Allocable Amount: as defined in **Section 5.11.3**.

Alternative Currency: Euros, Sterling or any other currency acceptable to the Agent, and the Issuing Bank.

Anti-Terrorism Law: any law relating to terrorism or money laundering, including the Patriot Act and the DMLTFPA.

Applicable Law: all laws, rules, regulations and governmental guidelines applicable to the Person or matter in question, including statutory law, common law and equitable principles, as well as provisions of constitutions, treaties, statutes, rules, regulations, orders and decrees of Governmental Authorities.

Applicable Margin: the margin set forth below:

(i) at any time prior to the Conversion Date, 2.75% with respect to U.S. Revolver Loans, and

(ii) upon and after the Conversion Date, as determined by the average daily Global Availability for the last Fiscal Quarter:

<u>Level</u>	<u>Global Availability (as % of Revolver Commitments)</u>	<u>U.S. Revolver Loans</u>	<u>Dutch Revolver Loans</u>
I	≤25%	2.00%	2.00%
II	>25% and ≤ 50%	1.75%	1.75%
III	>50%	1.50%	1.50%

Until the last day of the Fiscal Quarter after the completion of the first full Fiscal Quarter after the Conversion Date, margins shall be determined as if Level II were applicable. Thereafter, margins shall be subject to increase or decrease by Agent on the first day of the calendar month following each Fiscal Quarter end. If Agent is unable to calculate average daily Global Availability for a Fiscal Quarter due to Borrowers' failure to deliver any Borrowing Base Report when required hereunder, then, at the option of Agent or Required Lenders, margins shall be determined as if Level III were applicable until the first day of the calendar month following its receipt of such Borrowing Base Report.

Applicable Time Zone: for borrowings under, and payments due by Borrower or Lenders on (a) with respect to U.S. Revolver Loans, time of the day in Los Angeles, California, and (b) with respect to Dutch Revolver Loans, time of day in London, England

Approved Fund: any entity that is owned or Controlled by a Lender or Affiliate of a Lender, and is engaged in making or investing in commercial loans in its ordinary course of activities.

Asset Disposition: a sale, lease, license, consignment, transfer or other disposition of Property of an Obligor, including any disposition in connection with a sale-leaseback transaction or synthetic lease.

Assignment: an assignment agreement between a Lender and Eligible Assignee, in the form of **Exhibit A** or otherwise satisfactory to Agent.

Availability Reserve: the Dutch Availability Reserve or the U.S. Availability Reserve, as the context requires.

Bail-In Action: the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

Bail-In Legislation: with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

Bank of America Indemnites: Bank of America and its officers, directors, employees, Affiliates, agents and attorneys.

Bank Products: Dutch Bank Products and/or U.S. Bank Products, as the context so requires.

Bank Product Reserve: the Dutch Bank Product Reserve and/or U.S. Bank Product Reserve, as the context so requires.

Bankruptcy Code: Title 11 of the United States Code.

Board of Governors: the Board of Governors of the Federal Reserve System.

Borrowed Money: with respect to any Obligor, without duplication, its (a) Debt that (i) arises from the lending of money by any Person to such Obligor, (ii) is evidenced by notes, drafts, bonds, debentures, credit documents or similar instruments, (iii) accrues interest or is a type upon which interest charges are customarily paid (excluding trade payables owing in the Ordinary Course of Business), or (iv) was issued or assumed as full or partial payment for Property; (b) Capital Leases; (c) letter of credit reimbursement obligations; and (d) guaranties of any of the foregoing owing by another Person.

Borrower Agent: as defined in **Section 4.4**.

Borrower Materials: Dutch Borrowing Base Reports, U.S. Borrowing Base Reports, Compliance Certificates and other information, reports, financial statements and other materials delivered by any Borrower hereunder, as well as other Reports and information provided by Agent to Lenders.

Borrowing: a group of Dutch Revolver Loans or U.S. Revolver Loans (as applicable) that are made on the same day.

Borrowing Base Report: the Dutch Borrowing Base Report and/or U.S. Borrowing Base Report, as the context so requires.

Business Day: any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, California or Texas, and if such day relates to a LIBOR, any such day on which dealings in Dollar deposits are conducted in the London interbank market and if such day relates to a Dutch Revolver Loan or Dutch Letter of Credit, any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, London, England or Amsterdam, the Netherlands.

Capital Expenditures: all liabilities incurred or expenditures made by a Borrower or Subsidiary for the acquisition of fixed assets, or any improvements, replacements, substitutions or additions thereto with a useful life of more than one year.

Capital Lease: any lease required to be capitalized for financial reporting purposes in accordance with GAAP.

Cash Collateral: cash delivered to Agent to Cash Collateralize any Obligations, and all interest, dividends, earnings and other proceeds relating thereto.

Cash Collateralize: the delivery of cash to Agent, as security for the payment of (a) Dutch Obligations, in an amount equal to (i) with respect to Dutch LC Obligations, 105% of the aggregate Dutch LC Obligations, and (ii) with respect to any inchoate, contingent or other Dutch Obligations (including Dutch Secured Bank Product Obligations), Agent's good faith estimate of the amount due or to become due, including fees, expenses and indemnification hereunder and (b) U.S. Obligations, in an amount equal to (i) with respect to U.S. LC Obligations, 105% of the aggregate U.S. LC Obligations, and (ii) with respect to any inchoate, contingent or other U.S. Obligations (including U.S. Secured Bank Product Obligations), Agent's good faith estimate of the amount due or to become due, including fees, expenses and indemnification hereunder. "Cash Collateralization" has a correlative meaning.

Cash Equivalents: (a) marketable obligations issued or unconditionally guaranteed by, and backed by the full faith and credit of, the U.S. government, maturing within 12 months of the date of acquisition; (b) certificates of deposit, time deposits and bankers' acceptances maturing within 12 months of the date of acquisition, and overnight bank deposits, in each case which are issued by Bank of America or a commercial bank organized under the laws of the United States or any state or district thereof, rated A-1 (or better) by S&P or P-1 (or better) by Moody's at the time of acquisition, and (unless issued by a Lender) not subject to offset rights; (c) repurchase obligations with a term of not more than 30 days for underlying investments of the types described in clauses (a) and (b) entered into with any bank described in clause (b); (d) commercial paper issued by Bank of America or rated A-1 (or better) by S&P or P-1 (or better) by Moody's, and maturing within nine months of the date of acquisition; and (e) shares of any money market fund that has substantially all of its assets invested continuously in the types of investments referred to above, has net assets of at least \$500,000,000 and has the highest rating obtainable from either Moody's or S&P.

Cash Management Services: services relating to operating, collections, payroll, trust, or other depository or disbursement accounts, including automated clearinghouse, e-payable, electronic funds transfer, wire transfer, controlled disbursement, overdraft, depository, information reporting, lockbox and stop payment services.

CERCLA: the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. § 9601 et seq.).

Change in Law: the occurrence, after the date hereof, of (a) the adoption, taking effect or phasing in of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof; or (c) the making, issuance or application of any request, guideline, requirement or directive (whether or not having the force of

law) by any Governmental Authority; provided, that “Change in Law” shall include, regardless of the date enacted, adopted or issued, all requests, rules, guidelines, requirements or directives (i) under or relating to the Dodd-Frank Wall Street Reform and Consumer Protection Act, or (ii) promulgated pursuant to Basel III by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any similar authority) or any other Governmental Authority.

Change of Control: the occurrence of any of the following in any transaction or series of related transactions or events:

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”)), directly or indirectly, of thirty five percent (35)% or more of the Equity Interests of SMCI entitled to vote for members of the board of directors or equivalent governing body of the SMCI on a fully-diluted basis (and taking into account all such securities that such “person” or “group” has the right to acquire pursuant to any option right);

(b) SMCI fails to own and control 100% of the Equity Interests of its Subsidiaries except as a disposition of such Equity Interests is subject to a Permitted Asset Disposition; or

(c) during any period of twelve (12) consecutive months, a majority of the members of the board of directors or other equivalent governing body of SMCI cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body.

Claims: all claims, liabilities, obligations, losses, damages, penalties, judgments, proceedings, interest, costs and expenses of any kind (including remedial response costs, reasonable attorneys’ fees and Extraordinary Expenses) at any time (including after Full Payment of the Obligations or replacement of Agent or any Lender) incurred by any Indemnitee or asserted against any Indemnitee by any Obligor or other Person, in any way relating to (a) any Revolver Loans,

Letters of Credit, Loan Documents, Borrower Materials, or the use thereof or transactions relating thereto, (b) any action taken or omitted in connection with any Loan Documents, (c) the existence or perfection of any Liens, or realization upon any Collateral, (d) exercise of any rights or remedies under any Loan Documents or Applicable Law, or (e) failure by any Obligor to perform or observe any terms of any Loan Document, in each case including all costs and expenses relating to any investigation, litigation, arbitration or other proceeding (including an Insolvency Proceeding or appellate proceedings), whether or not the applicable Indemnitee is a party thereto.

Code: the Internal Revenue Code of 1986.

Collateral: the Dutch Collateral and/or U.S. Collateral, as the context so requires.

Commitment Termination Date: the earliest to occur of (a) the Revolver Termination Date; (b) the date on which Borrowers terminate the Revolver Commitments pursuant to **Section 2.1.5**; or (c) the date on which the Revolver Commitments are terminated pursuant to **Section 11.2**.

Commodity Exchange Act: the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*).

Competitor: the following listed Persons: Huawei, Inspur, Sogun, Lenova, Quanta, Winstron, Asus, Foxcon, Flextronics, Dell, HPE, IBM, Cisco, Fujitsu, NEC, Samsung, Intel, Seagate and Western Digital.

Compliance Certificate: a certificate, in form and substance satisfactory to Agent, by which Borrowers certify compliance with **Section 10.3** (and provide the calculation of the financial covenants set forth in **Section 10.3** whether or not a Trigger Period exists).

Connection Income Taxes: Other Connection Taxes that are imposed on or measured by net income (however denominated), or are franchise or branch profits Taxes.

Consolidated EBITDA: for any fiscal period, without duplication, the total of the following for SMCI and its Subsidiaries on a consolidated basis each calculated for such period in accordance with GAAP, (a) Consolidated Net Income plus (b) to the extent deducted in calculating such Consolidated Net Income (without duplication): the sum of (i) Consolidated Interest Charges, (ii) the provision for federal, state, local and foreign income taxes payable, (iii) depreciation and amortization expense (iv) fees and expenses incurred in connection with the negotiation, execution and delivery on the U.S. Closing Date of the Loan Documents, (v) non-cash charges and losses (excluding any such non-cash charges or losses to the extent (A) relating to any non-cash expenditure, charge or loss relating to write-offs, write-downs or reserves with respect to Accounts and Inventory, (B) any such non-cash item to the extent it represents an accrual of, or reserve for, such expenditures in any future period), (vi) non-cash expenses in connection with the issuance of Equity Interests (other than Disqualified Stock) to the extent permitted by this Agreement to the employees, officers or directors of SMCI or any of its Subsidiaries, (vii) non-recurring expenses in connection with any Permitted Acquisitions or other Investment permitted under this Agreement or a Permitted Asset

Disposition which is not in the Ordinary Course of Business, (viii) charges or expenses incurred and paid during the Fiscal Year ending June 30, 2018 in the aggregate amount not to exceed \$20,000,000, in connection with the preparation of the audited financial statements of SMCI for the Fiscal Year ending June 30, 2017 and the preparation and filing of Borrower's Form 10-K with the Securities and Exchange Commission for its Fiscal Year ending June 30, 2017, and (ix) any other item approved by Agent in its Permitted Discretion, plus (c) to the extent not included in determining Consolidated Net Income, business interruption insurance proceeds received in cash in such period less, (d) without duplication and to the extent reflected as a gain or otherwise included in the calculation of Consolidated Net Income for such period (i) any credit for federal, state, local or foreign income taxes payable, (ii) non-cash gains (excluding any such non-cash gains to the extent (A) there were cash gains with respect to such gains in past accounting periods or (B) there is a reasonable expectation that there will be cash gains with respect to such gains in future accounting periods), (iii) any aggregate net gain from any Permitted Asset Disposition (excluding the disposition of any Accounts or Inventory) made not in the Ordinary Course of Business and (iv) any other item required by Agent in its Permitted Discretion.

Consolidated Interest Charges: for any period of measurement, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with Borrowed Money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, (b) all interest paid or payable with respect to discontinued operations and (c) the portion of rent expense under capitalized Leases that is treated as interest in accordance with GAAP, in each case, of or by SMCI and its Subsidiaries on a consolidated basis.

Consolidated Net Income: at any date of determination, the net income (or loss) of SMCI and its Subsidiaries on a consolidated basis for the applicable period of measurement; provided that Consolidated Net Income shall exclude (a) extraordinary gains and extraordinary losses for such period, (b) the net income of any Subsidiary during such period to the extent that the declaration or payment of Distributions by such Subsidiary of such income is not permitted by operation of the terms of its Organic Documents or any agreement, instrument or law applicable to such Subsidiary during such period, and (c) any income (or loss) for such period of any Person if such Person is not a Subsidiary, except that the Equity Interests of SMCI or any of its Subsidiaries in the net income of any such Person for such period shall be included in Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such period to SMCI or a Subsidiary as a Distribution (and in the case of a Distribution to a Subsidiary, such Subsidiary is not precluded from further distributing such amount to SMCI as described in clause (b) of this proviso).

Contingent Obligation: any obligation of a Person arising from a guaranty, indemnity or other assurance of payment or performance of any Debt, lease, dividend or other obligation ("primary obligations") of another obligor ("primary obligor") in any manner, whether directly or indirectly, including any obligation of such Person under any (a) guaranty, endorsement, co-making or sale with recourse of an obligation of a primary obligor; (b) obligation to make take-or-pay or similar

payments regardless of nonperformance by any other party to an agreement; and (c) arrangement (i) to purchase any primary obligation or security therefor, (ii) to supply funds for the purchase or payment of any primary obligation, (iii) to maintain or assure working capital, equity capital, net worth or solvency of the primary obligor, (iv) to purchase Property or services for the purpose of assuring the ability of the primary obligor to perform a primary obligation, or (v) otherwise to assure or hold harmless the holder of any primary obligation against loss in respect thereof. The amount of any Contingent Obligation shall be deemed to be the stated or determinable amount of the primary obligation (or, if less, the maximum amount for which such Person may be liable under the instrument evidencing the Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability with respect thereto.

Control: possession, directly or indirectly, of the power to direct or cause direction of a Person's management or policies, whether through the ability to exercise voting power, by contract or otherwise.

Conversion Date: the date on which the Agent provides to Borrower Agent written notice (together with an updated **Schedule 1.1** reflecting the Revolver Commitments upon the occurrence of the Conversion Date) that each of the following conditions have been satisfied:

- (a) Borrower Agent has requested, in a writing delivered to Agent, that the Agent pursue the actions necessary to cause the Conversion Date to occur;
- (b) SMCI has filed all of its unfiled 10Q and 10K filings with the SEC and Agent and Supermajority Lenders have reviewed and approved all such filings;
- (c) SMCI has delivered to Agent and Lenders its Fiscal Year ending June 30, 2017 unqualified audited financial statements together with a management letter from its certified public accountants (who are acceptable to Agent), indicating that any issues resulting in the late filing of its 10Q and 10K filings with the SEC have been resolved;
- (d) confirmation by Agent that SMCI is in good standing with the NASDAQ Stock Market;
- (e) Agent has received satisfactory confirmation that upon the satisfaction of all of the conditions set forth in this definition, the Revolver Commitments shall be in an amount agreed upon by Agent and Borrower Agent;
- (f) Agent and Supermajority Lenders have completed their business and legal due diligence, including collateral reviews, field examinations, audits, appraisals, assessments and other reviews by Agent and Supermajority Lenders;
- (g) Global Availability after giving effect to the Conversion Date is in an amount greater than \$100,000,000;

(h) Agent has received such additional Revolver Commitments from the Lenders or Eligible Assignees as are deemed necessary by Agent and Borrower Agent;

(i) Each Lender providing a Revolver Commitment after the Conversion Date has obtained internal credit approval;

(j) All of the matters set forth in **Section 6.4.1** have been completed; and

(j) Agent has received all such documents executed by any Obligor, Lender or Eligible Assignee as deemed necessary by Agent in its Permitted Discretion, including any amendments to the Loan Documents.

CRR: means Regulation (EU) no. 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending regulation (EU) No. 648/2012.

CWA: the Clean Water Act (33 U.S.C. §§1251 et seq.).

Debt: as applied to any Person, without duplication, (a) all items that would be included as liabilities on a balance sheet in accordance with GAAP, including Capital Leases, but excluding trade payables incurred and being paid in the Ordinary Course of Business; (b) all Contingent Obligations; (c) all reimbursement obligations in connection with letters of credit issued for the account of such Person; and (d) in the case of a Borrower, the Obligations. The Debt of a Person shall include any recourse Debt of any partnership in which such Person is a general partner or joint venturer.

Default: an event or condition that, with the lapse of time or giving of notice, would constitute an Event of Default.

Default Rate: for any Obligation (including, to the extent permitted by law, interest not paid when due), 2% plus the interest rate otherwise applicable thereto.

Defaulting Lender: any Lender that (a) has failed to comply with its funding obligations hereunder, and such failure is not cured within two Business Days of the date required hereunder; (b) has notified Agent or any Borrower that such Lender does not intend to comply with its funding obligations hereunder or under any other credit facility, or has made a public statement to that effect; (c) has failed, within three Business Days following request by Agent or any Borrower, to confirm in a manner satisfactory to Agent and Borrowers that such Lender will comply with its funding obligations hereunder; or (d) other than an Undisclosed Administration, has, or has a direct or indirect parent company that has, become the subject of an Insolvency Proceeding (including reorganization, liquidation, or appointment of a receiver, custodian, administrator or similar Person by the Federal Deposit Insurance Corporation or any other regulatory authority) or Bail-In Action; provided, that a Lender shall not be a Defaulting Lender solely by virtue of a Governmental Authority's ownership of an equity interest in such Lender or parent company unless the ownership

provides immunity for such Lender from jurisdiction of courts within the United States or from enforcement of judgments or writs of attachment on its assets, or permits such Lender or Governmental Authority to repudiate or otherwise to reject such Lender's agreements.

Deposit Account Control Agreement: control agreement satisfactory to Agent executed by an institution maintaining a Deposit Account for an Obligor, to perfect Agent's Lien on such account.

Designated Jurisdiction: a country or territory that is the target of a Sanction.

Dilution Percent: the percent, determined for Borrowers' most recent Fiscal Quarter or trailing twelve month period (as determined by Agent), equal to (a) bad debt write-downs or write-offs, discounts, returns, promotions, credits, credit memos and other dilutive items with respect to Accounts, divided by (b) gross sales.

Dilution Reserve: with respect to Dutch Borrowers or U.S. Borrowers, an amount equal to 1.0% of the sum of Eligible Credit Insured Accounts and Eligible Non-Credit Insured Accounts for each percentage point (or portion thereof) that the Dilution Percent exceeds 5%.

Disqualified Institution: on any date, (a) any Person designated by Borrower Agent as a "Disqualified Institution" by written notice delivered to Agent on or prior to the date hereof and (b) any other Person that is a Competitor of a Borrower or any of its Subsidiaries, which Person has been designated by Borrower Agent as a "Disqualified Institution" by written notice to Agent and the Lenders (including by posting such notice to the Platform) not less than 15 Business Days prior to such date; provided that "Disqualified Institutions" shall exclude any Person that the Borrower Agent has designated as no longer being a "Disqualified Institution" by written notice delivered to the Agent from time to time.

Disqualified Stock: with respect to any Person, any Equity Interest issued by that Person, that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event (other than a Change in Control or similar event), (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable (other than solely for Equity Interests which are not otherwise Disqualified Stock), pursuant to a sinking fund obligation or otherwise or (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Equity Interest referred to in clause (a) above, in each case at any time prior to the date that is ninety-one (91) days after the Revolver Termination Date.

Distribution: any declaration or payment of a distribution, interest or dividend on any Equity Interest (other than payment-in-kind); distribution, advance or repayment of Debt to a holder of Equity Interests; or purchase, redemption, or other acquisition or retirement for value of any Equity Interest.

DMLTFPA: the Dutch Money Laundering and Terrorism Finance Prevention Act (*Wet ter voorkoming van witwassen en financieren van terrorisme*)

Dollars: lawful money of the United States.

Dominion Account: a special account established by Borrowers at Bank of America or another bank acceptable to Agent, over which Agent has exclusive control for withdrawal purposes; provided, that the Dominion Account into which proceeds of Dutch Collateral are deposited shall be in a country acceptable to Agent other than the Netherlands.

DQ List: as defined in **Section 13.5.4**.

Due Diligence Trigger Period: the period (a) Global Availability is less than the greater of (i) the \$50,000,000, and (ii) 17.5% of the Global Borrowing Base; and (b) continuing until, during each of the preceding 60 consecutive days, no Event of Default has existed and Global Availability has been more than the greater of (i) \$50,000,000 and (y) 17.5% of the Global Borrowing Base.

Dutch Accounts Formula Amount: the sum of 85% of the Value of Eligible Non-Credit Insured Accounts of Dutch Borrowers.

Dutch Availability: the Dutch Borrowing Base minus Dutch Revolver Usage.

Dutch Availability Reserve: the sum (without duplication) of (a) the Dutch Inventory Reserve; (b) the Rent and Charges Reserve with respect to any Dutch Borrower; (c) the Dutch Bank Product Reserve; (d) the aggregate amount of liabilities secured by Liens upon Dutch Collateral that are or may be senior to Agent's Liens (but imposition of any such reserve shall not waive an Event of Default arising therefrom); (e) the Dilution Reserve with respect to Dutch Borrowers; and (f) such additional reserves, in such amounts and with respect to such matters, as Agent in its Permitted Discretion may elect to impose from time to time.

Dutch Bank Account Pledge: the bank account pledge governed by Dutch law dated as of the Dutch Closing Date by and among the Dutch Borrowers and Agent.

Dutch Bank Product: any of the following products or services extended to a Dutch Borrower or Affiliate of a Dutch Borrower (other than U.S. Borrowers) by a Lender or any of its Affiliates: (a) Cash Management Services; (b) products under Hedging Agreements; (c) commercial credit card and merchant card services; and (d) leases, supply chain financing and other banking products or services, other than Dutch Letters of Credit.

Dutch Bank Product Reserve: the aggregate amount of reserves established by Agent from time to time in its discretion with respect to Dutch Secured Bank Product Obligations.

Dutch Borrowing Base: on any date of determination, an amount equal to the lesser of (a) the aggregate Dutch Revolver Commitments; or (b) the sum of the Dutch Accounts Formula Amount, plus the Dutch Inventory Formula Amount, minus the Dutch Availability Reserve; provided, that at no time shall the amount calculated hereunder exceed 30% of the Global Borrowing Base (calculated after giving effect to such limitation).

Dutch Borrowing Base Report: a report of the Dutch Borrowing Base, in form and substance satisfactory to Agent.

Dutch Closing Date: as defined in **Section 6.2**.

Dutch Collateral: all Property described in any Security Documents as security for any Dutch Obligations, and all other Property of a Dutch Obligor that now or hereafter secures (or is intended to secure) any Dutch Obligations.

Dutch Inventory Formula Amount: the lesser of (i) 70% of the Value of Eligible Inventory of Dutch Borrowers; or (ii) 85% of the NOLV Percentage of the Value of Eligible Inventory of Dutch Borrowers.

Dutch Inventory Reserve: reserves established by Agent to reflect factors that may negatively impact the Value of Inventory of Dutch Borrowers, including change in salability, obsolescence, seasonality, theft, shrinkage, imbalance, change in composition or mix, markdowns and vendor chargebacks.

Dutch LC Obligations: the sum of (a) all amounts owing by Dutch Borrowers for drawings under Dutch Letters of Credit; and (b) the Stated Amount of all outstanding Dutch Letters of Credit.

Dutch Lenders: lenders party to this Agreement (including Agent in its capacity as provider of Dutch Swingline Loans) and any Person who hereafter becomes a “Dutch Lender” pursuant to an Assignment, including any Lending Office of the foregoing.

Dutch Letter of Credit: any standby or documentary letter of credit, foreign guaranty, documentary bankers acceptance, indemnity, reimbursement agreement or similar instrument issued by Issuing Bank for the account or benefit of a Dutch Borrower or Affiliate of a Dutch Borrower (other than a U.S. Borrower).

Dutch Moveable Assets Pledge: the moveable assets pledge governed by Dutch law dated as of the Dutch Closing Date by and among the Dutch Borrower and the Agent.

Dutch Obligations: all (a) principal of and premium, if any, on the Dutch Revolver Loans, (b) Dutch LC Obligations and other obligations of Dutch Obligors with respect to Dutch Letters of Credit, (c) interest, expenses, fees, indemnification obligations, Extraordinary Expenses and other amounts payable by Dutch Obligors under Loan Documents, (d) Dutch Secured Bank Product Obligations, and (e) other Debts, obligations and liabilities of any kind owing by Dutch Obligors pursuant to the Loan Documents, in each case whether now existing or hereafter arising, whether evidenced by a note or other writing, whether allowed in any Insolvency Proceeding, whether arising from an extension of credit, issuance of a letter of credit, acceptance, loan, guaranty, indemnification or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, primary

or secondary, or joint or several; provided, that Dutch Obligations of a Dutch Obligor shall not include its Excluded Swap Obligations.

Dutch Obligor: each Dutch Borrower, Guarantor or other Person that is liable for payment of any Dutch Obligations or that has granted a Lien on its assets in favor of Agent to secure any Dutch Obligations and is organized under the laws of any Jurisdiction other than the U.S.

Dutch Protective Advances: as defined in **Section 2.1.7**.

Dutch Receivables Pledge: the receivables pledge governed by Dutch law dated as of the Dutch Closing Date by and among the Dutch Borrower and the Agent.

Dutch Revolver Commitment: for any Dutch Lender, its obligation to make Dutch Revolver Loans and to participate in Dutch LC Obligations up to the maximum principal amount shown on **Schedule 1.1**, as hereafter modified pursuant to **Sections 2.1.8** or **2.2.2** or an Assignment to which it is a party. “Dutch Revolver Commitments” means the aggregate amount of such commitments of all Dutch Lenders.

Dutch Revolver Loan: any loan made pursuant to **Section 2.1** or as a Dutch Swingline Loan.

Dutch Revolver Usage: (a) the aggregate amount of outstanding Dutch Revolver Loans; plus (b) the aggregate Stated Amount of outstanding Dutch Letters of Credit, except to the extent Cash Collateralized by Dutch Borrowers.

Dutch Secured Bank Product Obligations: Debt, obligations and other liabilities with respect to Dutch Bank Products owing by a Dutch Borrower or Affiliate of a Dutch Borrower (other than a U.S. Borrower) to a Dutch Secured Bank Product Provider; provided, that Dutch Secured Bank Product Obligations of a Dutch Obligor shall not include its Excluded Swap Obligations.

Dutch Secured Bank Product Provider: (a) Bank of America (and any of its Lending Offices) or any of its Affiliates; and (b) any other Dutch Lender or Affiliate of a Dutch Lender or a counterparty approved by Agent in its sole discretion, that is providing a Dutch Bank Product, provided such provider delivers written notice to Agent, in form and substance satisfactory to Agent, within 10 days following the later of the Dutch Closing Date or creation of the Dutch Bank Product, (i) describing the Dutch Bank Product and setting forth the maximum amount to be secured by the Dutch Collateral and the methodology to be used in calculating such amount, and (ii) agreeing to be bound by **Section 12.13**.

Dutch Secured Parties: Agent, Issuing Bank (with respect to Dutch Letters of Credit), Dutch Lenders and Dutch Secured Bank Product Providers.

Dutch Security Documents: the Dutch Moveable Assets Pledge, the Dutch Receivables Pledge, the Dutch Bank Account Pledge, the Dutch U.K. Security Agreement and the Dutch Share Pledge.

Dutch Share Pledge: the share pledge governed by Dutch law dated as of the Dutch Closing Date by and among direct owner of Dutch Borrower Equity Interests, the Dutch Borrower and Agent.

Dutch Swingline Loan: any Borrowing of Dutch Revolver Loans funded with Agent's funds, until such Borrowing is settled among Dutch Lenders or repaid by Dutch Borrowers.

Dutch U.K. Security Agreement: the security agreement governed by English law dated as of the Dutch Closing Date in relation to the Dominion Accounts of the Dutch Borrower in the United Kingdom by and among the Dutch Borrower and the Agent.

Dutch Works Councils Act: the Netherlands Works Councils Act (*Wet op de ondernemingsraden*).

EEA Financial Institution: (a) any credit institution or investment firm established in an EEA Member Country that is subject to the supervision of an EEA Resolution Authority; (b) any entity established in an EEA Member Country that is a parent of an institution described in clause (a) above; or (c) any financial institution established in an EEA Member Country that is a subsidiary of an institution described in the foregoing clauses and is subject to consolidated supervision with its parent.

EEA Member Country: any of the member states of the European Union, Iceland, Liechtenstein and Norway.

EEA Resolution Authority: any public administrative authority or any Person entrusted with public administrative authority of an EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

Eligible Account: an Account owing to a Borrower that arises in the Ordinary Course of Business from the sale of goods or rendition of services, is payable in Dollars or an Alternative Currency and is deemed by Agent, in its Permitted Discretion, to be an Eligible Account. Without limiting the foregoing, no Account shall be an Eligible Account if (a) once billed, it is unpaid for more than 60 days after the original due date, or more than 90 days after the original invoice date; (b) 50% or more of the Accounts owing by the Account Debtor are not Eligible Accounts under the foregoing clause; (c) when aggregated with other Accounts owing by the Account Debtor, it exceeds 20% of the aggregate Eligible Accounts (or such higher percentage as Agent may establish for the Account Debtor from time to time); (d) it does not conform with a covenant or representation herein; (e) it is owing by a creditor or supplier, or is otherwise subject to a potential offset, counterclaim, dispute, deduction, discount, recoupment, reserve, defense, chargeback, credit or allowance (but ineligibility shall be limited to the amount thereof); (f) an Insolvency Proceeding has been commenced by or against the Account Debtor; or the Account Debtor has failed, has suspended or ceased doing business, is liquidating, dissolving or winding up its affairs, is not Solvent, or is the target of any Sanction or on any specially designated nationals list maintained by OFAC; or the

Borrower is not able to bring suit or enforce remedies against the Account Debtor through judicial process; (g) it is owing by a Governmental Authority, unless the Account Debtor is the United States or any department, agency or instrumentality thereof and the Account has been assigned to Agent in compliance with the federal Assignment of Claims Act; (h) it is not subject to a duly perfected, first priority Lien in favor of Agent, or is subject to any other Lien; (i) the goods giving rise to it have not been delivered to the Account Debtor, the services giving rise to it have not been accepted by the Account Debtor, or it otherwise does not represent a final sale; (j) it is evidenced by Chattel Paper or an Instrument of any kind, or has been reduced to judgment; (k) its payment has been extended or the Account Debtor has made a partial payment; (l) it arises from a sale to an Affiliate, from a sale on a cash-on-delivery, bill-and-hold, sale-or-return, sale-on-approval, consignment, or other repurchase or return basis, or from a sale for personal, family or household purposes; (m) it represents a progress billing or retainage, or relates to services for which a performance, surety or completion bond or similar assurance has been issued; or (n) it includes a billing for interest, fees or late charges, but ineligibility shall be limited to the extent thereof. In calculating delinquent portions of Accounts under clauses (a) and (b), credit balances more than 90 days old will be excluded.

Eligible Assignee: (a) a Lender, Affiliate of a Lender or Approved Fund; (b) an assignee approved by Borrower Agent (which approval shall not be unreasonably withheld or delayed, and shall be deemed given if no objection is made within two Business Days after notice of the proposed assignment) and Agent; or (c) during an Event of Default, any Person acceptable to Agent in its discretion.

Eligible Credit Insured Accounts: Eligible Accounts with respect to which the applicable Account Debtor is organized or has its principal offices or assets outside the United States, Canada or other Account Debtor Approved Country but which is supported by a letter of credit (delivered to and directly drawable by Agent) or credit insurance satisfactory in all respects to Agent and is subject to such assignments and endorsements issues for the benefit of Agent, which are in form and substance satisfactory to Agent.

Eligible Inventory: Inventory owned by a Borrower that Agent, in its Permitted Discretion, deems to be Eligible Inventory. Without limiting the foregoing, no Inventory shall be Eligible Inventory unless it (a) is finished goods or raw materials, and not work-in-process, packaging or shipping materials, labels, samples, display items, bags, replacement parts or manufacturing supplies; (b) is not held on consignment, nor subject to any deposit or down payment; (c) is in new and saleable condition and is not damaged, defective, shopworn or otherwise unfit for sale; (d) is not slow-moving, perishable, obsolete or unmerchantable, and does not constitute returned or repossessed goods; (e) meets all standards imposed by any Governmental Authority, has not been acquired from a Person that is the target of any Sanction or on any specially designated nationals list maintained by OFAC, and does not constitute hazardous materials under any Environmental Law; (f) conforms with the covenants and representations herein; (g) is subject to Agent's duly perfected, first priority Lien, and no other Lien; (h) is within the continental United States or Canada

with respect to U.S. Borrowers and the Netherlands with respect to Dutch Borrower, is not in transit except between locations of Borrowers, and is not consigned to any Person; (i) is not subject to any warehouse receipt or negotiable Document; (j) is not subject to any License or other arrangement that restricts such Borrower's or Agent's right to dispose of such Inventory, unless Agent has received an appropriate Lien Waiver; and (k) is not located on leased premises or in the possession of a warehouseman, processor, repairman, mechanic, shipper, freight forwarder or other Person, unless the lessor or such Person has delivered a Lien Waiver or an appropriate Rent and Charges Reserve has been established; and (l) is reflected in the details of a current perpetual inventory report.

Eligible Non-Credit Insured Accounts: Eligible Accounts with respect to which the applicable Account Debtor is organized or has its principal offices or assets within the United States, Canada or other Account Debtor Approved Country.

Enforcement Action: any action to enforce any Obligations (other than Secured Bank Product Obligations) or Loan Documents or to exercise any rights or remedies relating to any Collateral, whether by judicial action, self-help, notification of Account Debtors, setoff or recoupment, credit bid, deed in lieu of foreclosure, action in an Insolvency Proceeding or otherwise.

Environmental Laws: Applicable Laws (including programs, permits and guidance promulgated by regulators) relating to public health (other than occupational safety and health regulated by OSHA) or the protection or pollution of the environment, including CERCLA, RCRA and CWA.

Environmental Notice: a notice (whether written or oral) from any Governmental Authority or other Person of any possible noncompliance with, investigation of a possible violation of, litigation relating to, or potential fine or liability under any Environmental Law, or with respect to any Environmental Release, environmental pollution or hazardous materials, including any complaint, summons, citation, order, claim, demand or request for correction, remediation or otherwise.

Environmental Release: a release as defined in CERCLA or under any other Environmental Law.

Equity Interest: the interest of any (a) shareholder in a corporation; (b) partner in a partnership (whether general, limited, limited liability or joint venture); (c) member in a limited liability company; or (d) other Person having any other form of equity security or ownership interest.

ERISA: the Employee Retirement Income Security Act of 1974.

ERISA Affiliate: any trade or business (whether or not incorporated) under common control with an Obligor within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

ERISA Event: (a) a Reportable Event with respect to a Pension Plan; (b) withdrawal of an Obligor or ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) complete or partial withdrawal of an Obligor or ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in insolvency pursuant to Section 4245 of ERISA; (d) filing of a notice of intent to terminate, treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA, or institution of proceedings by the PBGC to terminate a Pension Plan; (e) determination that a Pension Plan is considered an at-risk plan or a plan in critical or endangered status under the Code or ERISA; (f) an event or condition that constitutes grounds under Section 4042 of ERISA for termination of, or appointment of a trustee to administer, any Pension Plan; (g) imposition of any liability on an Obligor or ERISA Affiliate under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA; or (h) failure by an Obligor or ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules in respect of a Pension Plan, whether or not waived, or to make a required contribution to a Multiemployer Plan.

EU Bail-In Legislation Schedule: the EU Bail-In Legislation Schedule published by the Loan Market Association, as in effect from time to time.

Event of Default: as defined in **Section 11**.

Excluded Accounts: all Deposit Accounts (a) maintained solely as payroll, healthcare or other employee wage and benefit accounts (including withholding tax payments related thereto), (b) that are “zero balance” accounts or maintained solely as escrow accounts or fiduciary or trust accounts for the benefit of third parties who are not any Obligor or its Subsidiaries and (c) other Deposit Accounts individually containing not more than \$500,000 at any time and collectively containing not more than \$2,000,000 at any time.

Excluded Swap Obligation: with respect to an Obligor, each Swap Obligation as to which, and only to the extent that, such Obligor’s guaranty of or grant of a Lien as security for such Swap Obligation is or becomes illegal under the Commodity Exchange Act because the Obligor does not constitute an “eligible contract participant” as defined in the act (determined after giving effect to any keepwell, support or other agreement for the benefit of such Obligor and all guarantees of Swap Obligations by other Obligors) when such guaranty or grant of Lien becomes effective with respect to the Swap Obligation. If a Hedging Agreement governs more than one Swap Obligation, only the Swap Obligation(s) or portions thereof described in the foregoing sentence shall be Excluded Swap Obligation(s) for the applicable Obligor.

Excluded Taxes: any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes and branch profits Taxes, in each case (i) as a result of such Recipient being organized under the laws of, or having its principal office or, in

the case of any Lender, applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof), or (ii) constituting Other Connection Taxes; (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of a Lender or Issuing Bank with respect to its interest in a Revolver Loan, Revolver Commitment, or Letter of Credit pursuant to a law in effect when the Lender or Issuing Bank acquires such interest (except pursuant to an assignment request by Borrower Agent under **Section 13.4**) or changes its Lending Office, unless the Taxes were payable to its assignor immediately prior to such assignment or to the Lender or Issuing Bank immediately prior to its change in Lending Office; (c) Taxes attributable to a Recipient's failure to comply with **Section 5.10**; (d) U.S. federal withholding Taxes imposed pursuant to FATCA and (e) any U.S. backup withholding Taxes.

Extraordinary Expenses: all costs, expenses or advances that Agent may incur during a Default or Event of Default, or during the pendency of an Insolvency Proceeding of an Obligor, including those relating to (a) any audit, inspection, repossession, storage, repair, appraisal, insurance, manufacture, preparation or advertising for sale, sale, collection, or other preservation of or realization upon any Collateral; (b) any action, arbitration or other proceeding (whether instituted by or against Agent, any Lender, any Obligor, any representative of creditors of an Obligor or any other Person) in any way relating to any Collateral (including the validity, perfection, priority or avoidability of Agent's Liens with respect to any Collateral), Loan Documents, Letters of Credit or Obligations, including any lender liability or other Claims; (c) the exercise of any rights or remedies of Agent in, or the monitoring of, any Insolvency Proceeding; (d) settlement or satisfaction of taxes, charges or Liens with respect to any Collateral; (e) any Enforcement Action; and (f) negotiation and documentation of any modification, waiver, workout, restructuring or forbearance with respect to any Loan Documents or Obligations. Such costs, expenses and advances include transfer fees, Other Taxes, storage fees, insurance costs, permit fees, utility reservation and standby fees, legal fees, appraisal fees, brokers' and auctioneers' fees and commissions, accountants' fees, environmental study fees, wages and salaries paid to employees of any Obligor or independent contractors in liquidating any Collateral, and travel expenses.

FATCA: Sections 1471 through 1474 of the Code (including any amended or successor version if substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

Federal Funds Rate: (a) the weighted average per annum interest rate on overnight federal funds transactions with members of the Federal Reserve System on the applicable day (or the preceding Business Day, if the applicable day is not a Business Day), as published by the Federal Reserve Bank of New York on the next Business Day; or (b) if the rate is not so published, the average rate per annum (rounded up to the nearest 1/8 of 1%) charged to Bank of America on the

applicable day on such transactions, as determined by Agent; provided, that in no event shall the Federal Funds Rate be less than zero.

Fiscal Quarter: each period of three months, commencing on the first day of a Fiscal Year.

Fiscal Year: the fiscal year of Borrowers and Subsidiaries for accounting and tax purposes, ending on June 30 of each year.

Fixed Charge Coverage Ratio: the ratio, determined on a consolidated basis for Borrowers and Subsidiaries for the most recent 12 months, of (a) Consolidated EBITDA minus Capital Expenditures (except those financed with Borrowed Money other than Revolver Loans) and cash taxes paid, to (b) Fixed Charges.

Fixed Charges: the sum of interest expense (other than payment-in-kind), principal payments made on Borrowed Money, and Distributions made; provided, however, that, “interest expense” shall not include interest expense in connection with intercompany Debt solely among Obligor.

FLSA: the Fair Labor Standards Act of 1938.

Flood Laws: the National Flood Insurance Act of 1968, Flood Disaster Protection Act of 1973 and related laws.

Foreign Base Rate: with respect to Loans denominated in Euros, Sterling and Dollars that are funded outside the U.S., LIBOR as in effect on the first day of the current calendar month; provided, that in no event shall the Foreign Base Rate be less than zero.

Foreign Lender: any Lender that is not a U.S. Person.

Foreign Plan: any employee benefit plan or arrangement (a) maintained or contributed to by any Obligor or Subsidiary that is not subject to the laws of the United States; or (b) mandated by a government other than the United States for employees of any Obligor or Subsidiary.

Foreign Subsidiary: a Subsidiary that is a “controlled foreign corporation” under Section 957 of the Code or a Subsidiary that is classified as “disregarded as an entity separate from its owner” within the meaning of Section 301.7701-3(a) of the U.S. Treasury Regulations that is treated as owning such controlled foreign corporation, such that a guaranty by such Subsidiary of the Obligations or a Lien on the assets of such Subsidiary to secure the Obligations would result in Tax liability to one or more Borrower.

Fronting Exposure: a Defaulting Lender’s interest in LC Obligations, Swingline Loans and Protective Advances, except to the extent Cash Collateralized by the Defaulting Lender or allocated to other Lenders hereunder.

Full Payment: with respect to any Obligations, (a) the full and indefeasible cash payment thereof, including any interest, fees and other charges accruing during an Insolvency Proceeding (whether or not allowed in the proceeding); and (b) if such Obligations are LC Obligations or inchoate or contingent in nature, Cash Collateralization thereof (or delivery of a standby letter of credit acceptable to Agent in its discretion, in the amount of required Cash Collateral). No Revolver Loans shall be deemed to have been paid in full unless all Revolver Commitments related to such Revolver Loans are terminated.

GAAP: (a) in respect of U.S. Obligors and any financial statements or other financial information delivered to any Secured Party which is to be prepared for Borrower and its Subsidiaries on a consolidated basis, generally accepted accounting principles in effect in the United States from time to time and (b) in respect of Dutch Obligors, IFRS as in effect from time to time.

Global Availability: the sum of the Dutch Availability and U.S. Availability.

Global Borrowing Base: the sum of the Dutch Borrowing Base and U.S. Borrowing Base.

Global Revolver Usage: the sum of the Dutch Revolver Usage and U.S. Revolver Usage.

Governmental Approvals: all authorizations, consents, approvals, licenses and exemptions of, registrations and filings with, and required reports to, all Governmental Authorities.

Governmental Authority: any federal, state, local, foreign or other agency, authority, body, commission, court, instrumentality, political subdivision, central bank, or other entity or officer exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions for any governmental, judicial, investigative, regulatory or self-regulatory authority (including the Financial Conduct Authority, the Prudential Regulation Authority and any supra-national bodies such as the European Union or European Central Bank).

Guarantor Payment: as defined in **Section 5.11.3**.

Guarantors: each Person that guarantees payment or performance of any of the Obligations, including a guaranty of the Dutch Obligations by U.S. Obligors. With respect to any Obligations of a U.S. Obligor, “Guarantor” shall exclude any Foreign Subsidiary.

Guaranty: each guaranty agreement executed by a Guarantor in favor of Agent.

Hedging Agreement: a “swap agreement” as defined in Bankruptcy Code Section 101(53B)(A).

IFRS: the International Financial Reporting Standards issued by the International Accounting Standards Board, as in effect from time to time.

Indemnified Taxes: (a) Taxes, other than Excluded Taxes, imposed on or relating to any payment of an Obligation; and (b) to the extent not otherwise described in clause (a), Other Taxes.

Indemnitees: Agent Indemnitees, Lender Indemnitees, Issuing Bank Indemnitees and Bank of America Indemnitees.

Insolvency Proceeding: any case or proceeding commenced by or against a Person under any state, federal or foreign law for, or any agreement of such Person to, (a) the entry of an order for relief under the Bankruptcy Code, or any other insolvency, debtor relief or debt adjustment law; (b) the appointment of a receiver, trustee, liquidator, administrator, conservator or other custodian for such Person or any part of its Property; or (c) an assignment or trust mortgage for the benefit of creditors.

Insolvency Regulation: Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast).

Insured Accounts Sublimit: \$10,000,000.

Intellectual Property: all intellectual and similar Property of a Person, including inventions, designs, patents, copyrights, trademarks, service marks, trade names, trade secrets, confidential or proprietary information, customer lists, know-how, software and databases; all embodiments or fixations thereof and all related documentation, applications, registrations and franchises; all licenses or other rights to use any of the foregoing; and all books and records relating to the foregoing.

Intellectual Property Claim: any claim or assertion (whether in writing, by suit or otherwise) that a Borrower's or Subsidiary's ownership, use, marketing, sale or distribution of any Inventory, Equipment, Intellectual Property or other Property violates another Person's Intellectual Property.

Inventory: as defined in the UCC, including all goods intended for sale, lease, display or demonstration; all work in process; and all raw materials, and other materials and supplies of any kind that are or could be used in connection with the manufacture, printing, packing, shipping, advertising, sale, lease or furnishing of such goods, or otherwise used or consumed in a Borrower's business (but excluding Equipment).

Inventory Sublimit: \$100,000,000.

Investment: an Acquisition, an acquisition of record or beneficial ownership of any Equity Interests of a Person, or an advance or capital contribution to or other investment in a Person.

IRS: the United States Internal Revenue Service.

Issuing Bank: Bank of America (including any Lending Office of Bank of America), or any replacement issuer appointed pursuant to **Section 2.3.4**.

Issuing Bank Indemnitees: Issuing Bank and its officers, directors, employees, Affiliates, agents and attorneys.

Judgment Currency: as defined in Section 1.5.

LC Application: an application by Borrower Agent to Issuing Bank for issuance of a Letter of Credit, in form and substance satisfactory to Issuing Bank and Agent.

LC Conditions: upon giving effect to issuance of a Letter of Credit, (a) the conditions in **Section 6** are satisfied; (b) with respect to Dutch Letters of Credit, the total sum of Dutch LC Obligations and U.S. LC Obligations do not exceed the Letter of Credit Subline and Dutch Revolver Usage does not exceed the Dutch Borrowing Base; (c) with respect to U.S. Letters of Credit, the total sum of Dutch LC Obligations and U.S. LC Obligations do not exceed the Letter of Credit Subline and U.S. Revolver Usage does not exceed the U.S. Borrowing Base; (d) with respect to any Letters of Credit, the total LC Obligations do not exceed the Letter of Credit Subline and Global Revolver Usage does not exceed the Global Borrowing Base; (e) the Letter of Credit and payments thereunder are denominated in Dollars or an Alternative Currency; and (f) the purpose and form of the Letter of Credit are satisfactory to Agent and Issuing Bank in their discretion.

LC Documents: all documents, instruments and agreements (including LC Requests and LC Applications) delivered by Borrowers or any other Person to Issuing Bank or Agent in connection with any Letter of Credit.

LC Obligations: the sum of Dutch LC Obligations and U.S. LC Obligations.

LC Request: a request for issuance of a Letter of Credit, to be provided by Borrower Agent to Issuing Bank, in form satisfactory to Agent and Issuing Bank.

Lender Indemnitees: Lenders and Secured Bank Product Providers, and their officers, directors, employees, Affiliates, agents and attorneys.

Lenders: the Dutch Lenders and/or U.S. Lenders, as the context so requires.

Lending Office: the office (including any domestic or foreign Affiliate or branch) designated as such by Agent, a Lender or Issuing Bank by notice to Borrower Agent and, if applicable, Agent.

Letter of Credit: Dutch Letters of Credit and/or U.S. Letters of Credit, as the context so requires.

Letter of Credit Subline: \$5,000,000.

LIBOR: with respect to Revolver Loans, the per annum rate of interest (rounded up to the nearest 1/8th of 1%) determined by the Agent on the first day of each month for a one-month interest period, equal to the London Interbank Offered Rate, or comparable or successor rate approved by

the Agent, as published on the applicable Reuters screen page (or other commercially available source designated by the Agent from time to time); provided, that any comparable or successor rate shall be applied by Agent, if administratively feasible, in a manner consistent with market practice; and provided further, that in no event shall LIBOR be less than zero.

License: any license or agreement under which an Obligor is authorized to use Intellectual Property in connection with any manufacture, marketing, distribution or disposition of Collateral, any use of Property or any other conduct of its business.

Licensor: any Person from whom an Obligor obtains the right to use any Intellectual Property.

Lien: a Person's interest in Property securing an obligation owed to, or a claim by, such Person, including any lien, security interest, pledge, hypothecation, assignment, trust, reservation, encroachment, easement, right-of-way, covenant, condition, restriction, lease, or other title exception or encumbrance.

Lien Waiver: an agreement, in form and substance satisfactory to Agent, by which (a) for any material Collateral located on leased premises, the lessor waives or subordinates any Lien it may have on the Collateral, and agrees to permit Agent to enter upon the premises and remove the Collateral or to use the premises to store or dispose of the Collateral; (b) for any Collateral held by a warehouseman, processor, shipper, customs broker or freight forwarder, such Person waives or subordinates any Lien it may have on the Collateral, agrees to hold any Documents in its possession relating to the Collateral as agent for Agent, and agrees to deliver the Collateral to Agent upon request; (c) for any Collateral held by a repairman, mechanic or bailee, such Person acknowledges Agent's Lien, waives or subordinates any Lien it may have on the Collateral, and agrees to deliver the Collateral to Agent upon request; and (d) for any Collateral subject to a Licensor's Intellectual Property rights, the Licensor grants to Agent the right, vis-à-vis such Licensor, to enforce Agent's Liens with respect to the Collateral, including the right to dispose of it with the benefit of the Intellectual Property, whether or not a default exists under any applicable License.

Loan Documents: this Agreement, Other Agreements and Security Documents.

Loan Year: each 12 month period commencing on the U.S. Closing Date or an anniversary thereof.

Margin Stock: as defined in Regulation U of the Board of Governors.

Material Adverse Effect: the effect of any event or circumstance that, taken alone or in conjunction with other events or circumstances, (a) has or could be reasonably expected to have a material adverse effect on the business, operations, Properties, or condition (financial or otherwise) of the Obligors (taken as a whole), on the value of any material Collateral, on the enforceability of any Loan Document, or on the validity or priority of Agent's Liens on any Collateral; (b) impairs the ability of the Obligors (taken as a whole) to perform their payment obligations under the Loan

Documents; or (c) otherwise materially impairs the ability of Agent or any Lender to enforce or collect any Obligations or to realize upon any Collateral.

Material Contract: any agreement or arrangement to which a Borrower or Subsidiary is party (other than the Loan Documents) (a) that is deemed to be a material contract under any securities law applicable to such Person, including the Securities Act of 1933; (b) for which breach, termination, nonperformance or failure to renew could reasonably be expected to have a Material Adverse Effect; or (c) that relates to Subordinated Debt, or to Debt in an aggregate amount of \$10,000,000 or more.

Moody's: Moody's Investors Service, Inc. or any successor acceptable to Agent.

Mortgage: a mortgage or deed of trust in which an Obligor grants a Lien on its Real Estate to Agent, as security for its Obligations.

Multiemployer Plan: any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which an Obligor or ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

Net Proceeds: with respect to an Asset Disposition, proceeds (including, when received, any deferred or escrowed payments) received by a Borrower or Subsidiary in cash from such disposition, net of (a) reasonable and customary costs and expenses actually incurred in connection therewith, including legal fees and sales commissions; (b) amounts applied to repayment of Debt secured by a Permitted Lien senior to Agent's Liens on Collateral sold; (c) transfer or similar taxes; and (d) reserves for indemnities, until such reserves are no longer needed.

NOLV Percentage: the net orderly liquidation value of Inventory, expressed as a percentage, expected to be realized at an orderly, negotiated sale held within a reasonable period of time, net of all liquidation expenses, as determined from the most recent appraisal of Borrowers' Inventory performed by an appraiser and on terms satisfactory to Agent.

Non-Public Lender means: (i) until interpretation of "public" as referred to in the CRR by the relevant authority/ies: an entity that provides repayable funds to a Dutch Obligor for a minimum initial amount of EUR 100,000 (or its equivalent in another currency) or an entity otherwise qualifying as not forming part of the public; and (ii) following the publication of an interpretation of "public" as referred to in the CRR by the relevant authority/ies: such amount or such criterion as a result of which such entity shall qualify as not forming part of the public.

Notice of Borrowing: a request by Borrower Agent for a Borrowing of Revolver Loans, in form satisfactory to Agent.

Obligations: the sum of the Dutch Obligations and U.S. Obligations.

Obligor: the Dutch Obligors and U.S. Obligors.

OFAC: Office of Foreign Assets Control of the U.S. Treasury Department.

Ordinary Course of Business: the ordinary course of business of any Borrower or Subsidiary, undertaken in good faith and consistent with Applicable Law and past practices.

Organic Documents: with respect to any Person, its charter, certificate or articles of incorporation, bylaws, articles of organization, limited liability agreement, operating agreement, members agreement, shareholders agreement, partnership agreement, certificate of partnership, certificate of formation, voting trust agreement, or similar agreement or instrument governing the formation or operation of such Person.

OSHA: the Occupational Safety and Hazard Act of 1970.

Other Agreement: each LC Document, fee letter, Lien Waiver, Real Estate Related Document, Dutch Borrowing Base Report, U.S. Borrowing Base Report, Compliance Certificate, Borrower Materials, or other note, document, instrument or agreement (other than this Agreement or a Security Document) now or hereafter delivered by an Obligor or other Person to Agent or a Lender in connection with any transactions relating hereto.

Other Connection Taxes: Taxes imposed on a Recipient due to a present or former connection between it and the jurisdiction imposing such Tax (other than connections arising from the Recipient having executed, delivered, become party to, performed obligations or received payments under, received or perfected a Lien or engaged in any other transaction pursuant to, enforced, or sold or assigned an interest in, any Revolver Loan or Loan Document).

Other Taxes: all present or future stamp, court, documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a Lien under, or otherwise with respect to, any Loan Document, except Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 13.4(c)**).

Overadvance: the sum of the Dutch Overadvances and U.S. Overadvances.

Parallel Obligations: as defined in **Section 12.16**.

Participant: as defined in **Section 13.2**.

Patriot Act: the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

Payment Conditions: both before and after giving effect to any such payment (whether as a Distribution, Investment or prepayment of Debt) and giving pro forma effect to the applicable payment:

(i) no Default or Event of Default has occurred and is continuing or would arise as a result of the applicable payment, and

(ii) either

(a) (x) Global Availability upon the making of the payment and for each of the 30 consecutive dates immediately prior thereto shall be greater than the greater of (1) \$75,000,000 and (2) 17.5% of the Global Borrowing Base then in effect (provided, that at least 50% of the Global Borrowing Base for the purpose of this sub-clause (x) shall consist of the U.S. Borrowing Base), and (y) Fixed Charge Coverage Ratio is equal to or greater than 1.00 to 1.00, or

(b) Global Availability upon the making of the payment and for each of the 30 consecutive dates immediately prior thereto shall be greater than the greater of (1) \$100,000,000 and (2) 22.5% of the Global Borrowing Base then in effect (provided, that at least 50% of the Global Borrowing Base for the purpose of this clause (b) shall consist of the U.S. Borrowing Base).

Payment Item: each check, draft or other item of payment payable to a Borrower, including those constituting proceeds of any Collateral.

PBGC: the Pension Benefit Guaranty Corporation.

Pension Funding Rules: Code and ERISA rules regarding minimum required contributions (including installment payments) to Pension Plans set forth in, for plan years ending prior to the Pension Protection Act of 2006 effective date, Section 412 of the Code and Section 302 of ERISA, both as in effect prior to such act, and thereafter, Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

Pension Plan: any employee pension benefit plan (as defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Obligor or ERISA Affiliate or to which the Obligor or ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the preceding five plan years.

Permitted Acquisition: any Acquisition consummated after the occurrence of the events set forth in clauses (b), (c) and (d) of the definition of "Conversion Date", as long as (a) no Default or Event of Default exists and is continuing or is caused thereby; (b) the Acquisition is consensual; (c) the assets, business or Person being acquired is useful or engaged in the business of Borrowers and Subsidiaries, is located or organized within the United States, and had positive Consolidated EBITDA for the 12 month period most recently ended; (d) no Debt or Liens are assumed or incurred, except as permitted by **Sections 10.2.1(f), 10.2.1(i) and 10.2.2(j)**; and (e) Borrowers deliver to Agent, at least 10 Business Days prior to the Acquisition, copies of all material agreements relating

thereto and a certificate, in form and substance reasonably satisfactory to Agent, stating that the Acquisition is a “Permitted Acquisition” and demonstrating compliance with the foregoing requirements.

Permitted Asset Disposition: as long as no Default or Event of Default exists and is continuing and all Net Proceeds are remitted to Agent, an Asset Disposition that is (a) a sale of Inventory in the Ordinary Course of Business; (b) a disposition of Equipment that, in the aggregate during any 12 month period, has a fair market or book value (whichever is more) of \$1,000,000 or less; (c) a disposition of Inventory that is obsolete, unmerchantable or otherwise unsalable in the Ordinary Course of Business; (d) termination of a lease of real or personal Property, leasing of real Property, subleasing of leased real Property, or assigning a lease of real Property; provided that, any such Property that is not necessary for the Ordinary Course of Business, could not reasonably be expected to have a Material Adverse Effect and does not result from an Obligor’s default; or (e) approved in writing by Agent and Required Lenders.

Permitted Contingent Obligations: Contingent Obligations (a) arising from endorsements of Payment Items for collection or deposit in the Ordinary Course of Business; (b) arising from Hedging Agreements permitted hereunder; (c) existing on the U.S. Closing Date with respect to U.S. Borrowers and on the Dutch Closing Date with respect to Dutch Borrowers, and any extension or renewal thereof that does not increase the amount of such Contingent Obligation when extended or renewed; (d) incurred in the Ordinary Course of Business with respect to surety, appeal or performance bonds, or other similar obligations; (e) arising from customary indemnification obligations in favor of purchasers in connection with dispositions of Equipment permitted hereunder; (f) arising under the Loan Documents; or (g) in an aggregate amount of \$5,000,000 or less at any time.

Permitted Discretion: a determination made in the exercise, in good faith, of reasonable business judgment (from the perspective of a secured, asset-based lender).

Permitted Intercompany Loans: loans made by an Obligor to a non-Obligor Subsidiary of Borrower so long as (i) no Default or Event of Default exists immediately before and after giving effect thereto and (ii) the aggregate outstanding amount thereof at no time exceeds \$20,000,000.

Permitted Lien: as defined in **Section 10.2.2**.

Permitted Purchase Money Debt: Purchase Money Debt of Borrowers and Subsidiaries that is unsecured or secured only by a Purchase Money Lien, as long as the aggregate amount incurred after the U.S. Closing Date does not exceed \$20,000,000 at any time.

Person: any individual, corporation, limited liability company, partnership, joint venture, association, trust, unincorporated organization, Governmental Authority or other entity.

Plan: an employee benefit plan (as defined in Section 3(3) of ERISA) maintained for employees of an Obligor or ERISA Affiliate, or to which an Obligor or ERISA Affiliate is required to contribute on behalf of its employees.

Platform: as defined in **Section 14.3.3**.

Prime Rate: the rate of interest announced by Bank of America from time to time as its prime rate. Such rate is set by Bank of America on the basis of various factors, including its costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above or below such rate. Any change in such rate publicly announced by Bank of America shall take effect at the opening of business on the day specified in the announcement.

Pro Rata: shall mean:

(a) with respect to any Dutch Lender, a percentage (rounded to the ninth decimal place) determined (a) by dividing the amount of such Dutch Lender's Dutch Revolver Commitment by the aggregate outstanding Dutch Revolver Commitments; or (b) following termination of the Dutch Revolver Commitments, by dividing the amount of such Dutch Lender's Dutch Revolver Loans and Dutch LC Obligations by the aggregate outstanding Dutch Revolver Loans and Dutch LC Obligations or, if all Dutch Revolver Loans and Dutch LC Obligations have been paid in full and/or Cash Collateralized, by dividing such Dutch Lender's and its Affiliates' remaining Dutch Obligations by the aggregate remaining Dutch Obligations;

(b) with respect to any U.S. Lender, a percentage (rounded to the ninth decimal place) determined (a) by dividing the amount of such U.S. Lender's U.S. Revolver Commitment by the aggregate outstanding U.S. Revolver Commitments; or (b) following termination of the U.S. Revolver Commitments, by dividing the amount of such U.S. Lender's U.S. Revolver Loans and U.S. LC Obligations by the aggregate outstanding U.S. Revolver Loans and U.S. LC Obligations or, if all U.S. Revolver Loans and U.S. LC Obligations have been paid in full and/or Cash Collateralized, by dividing such U.S. Lender's and its Affiliates' remaining U.S. Obligations by the aggregate remaining U.S. Obligations; and

(c) with respect to any Lender, a percentage (rounded to the ninth decimal place) determined (a) by dividing the amount of such Lender's Revolver Commitment by the aggregate outstanding Revolver Commitments; or (b) following termination of the Revolver Commitments, by dividing the amount of such Lender's Revolver Loans and LC Obligations by the aggregate outstanding Revolver Loans and LC Obligations or, if all Revolver Loans and LC Obligations have been paid in full and/or Cash Collateralized, by dividing such Lender's and its Affiliates' remaining Obligations by the aggregate remaining Obligations.

Properly Contested: with respect to any obligation of an Obligor, (a) the obligation is subject to a bona fide dispute regarding amount or the Obligor's liability to pay; (b) the obligation is being

properly contested in good faith by appropriate proceedings promptly instituted and diligently pursued; (c) appropriate reserves have been established in accordance with GAAP; (d) non-payment could not have a Material Adverse Effect, nor result in forfeiture or sale of any assets of the Obligor; (e) no Lien is imposed on assets of the Obligor, unless bonded and stayed to the satisfaction of Agent; and (f) if the obligation results from entry of a judgment or other order, such judgment or order is stayed pending appeal or other judicial review.

Property: any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

Protective Advances: the sum of the Dutch Protective Advances and U.S. Protective Advances.

Purchase Money Debt: (a) Debt (other than the Obligations) for payment of any of the purchase price of fixed assets; (b) Debt (other than the Obligations) incurred within 10 days before or after acquisition of any fixed assets, for the purpose of financing any of the purchase price thereof; and (c) any renewals, extensions or refinancings (but not increases) thereof.

Purchase Money Lien: a Lien that secures Purchase Money Debt, encumbering only the fixed assets acquired with such Debt and constituting a Capital Lease or a purchase money security interest under the UCC.

Qualified ECP: an Obligor with total assets exceeding \$10,000,000, or that constitutes an “eligible contract participant” under the Commodity Exchange Act and can cause another Person to qualify as an “eligible contract participant” under Section 1a(18)(A)(v) (II) of such act.

RCRA: the Resource Conservation and Recovery Act (42 U.S.C. §§ 6991-6991i).

Real Estate: all right, title and interest (whether as owner, lessor or lessee) in any real Property or any buildings, structures, parking areas or other improvements thereon.

Reallocation: as defined in **Section 2.2.2**.

Reallocation Date: as defined in **Section 2.2.2**.

Recipient: Agent, Issuing Bank, any Lender or any other recipient of a payment to be made by an Obligor under a Loan Document or on account of an Obligation.

Refinancing Conditions: (a) the Refinancing Debt is in an aggregate principal amount that does not exceed the principal amount of the Debt being extended, renewed or refinanced; (b) it has a final maturity no sooner than, a weighted average life no less than, and an interest rate no greater than, the Debt being extended, renewed or refinanced; (c) it is subordinated to the Obligations at least to the same extent as the Debt being extended, renewed or refinanced; (d) the representations, covenants and defaults applicable to it are no less favorable to Borrowers than those applicable to

the Debt being extended, renewed or refinanced; (e) no additional Lien is granted to secure it; (f) no additional Person is obligated on such Debt; and (g) upon giving effect to it, no Default or Event of Default exists and is continuing.

Refinancing Debt: Borrowed Money that is the result of an extension, renewal or refinancing of Debt permitted under **Section 10.2.1(b), (d), (f) or (i)**.

Reimbursement Date: as defined in **Section 2.3.2**.

Related Real Estate Documents: with respect to any Real Estate subject to a Mortgage, the following, in form and substance satisfactory to Agent and received by Agent for review: (a) at least 45 days prior to the effective date of the Mortgage, all information requested by Agent or any Lender for due diligence pursuant to Flood Laws; and (b) at least 15 days prior to the effective date of the Mortgage, (i) a mortgagee title policy (or binder therefor) covering Agent's interest under the Mortgage, by an insurer acceptable to Agent, which must be fully paid on such effective date; (ii) such assignments of leases, estoppel letters, attornment agreements, consents, waivers and releases as Agent may require with respect to other Persons having an interest in the Real Estate; (iii) a current, as-built survey of the Real Estate, containing a metes-and-bounds property description and certified by a licensed surveyor acceptable to Agent; (iv) a life-of-loan flood hazard determination and, if any Real Estate is located in a special flood hazard zone, flood insurance documentation and coverage as required by Flood Laws or otherwise satisfactory to each Lender; (v) a current appraisal of the Real Estate, prepared by an appraiser acceptable to Agent, and in form and substance satisfactory to Required Lenders; (vi) an environmental assessment, prepared by environmental engineers acceptable to Agent, an environmental indemnity agreement if appropriate, and such other reports, certificates, studies or data as Agent may reasonably require, all in form and substance satisfactory to Required Lenders; and (vii) such other documents, instruments or agreements as Agent may reasonably require with respect to the Real Estate and Mortgage.

Rent and Charges Reserve: the aggregate of (a) all past due rent and other amounts owing by an Obligor to any landlord, warehouseman, processor, repairman, mechanic, shipper, freight forwarder, broker or other Person who possesses any Collateral or could assert a Lien on any Collateral; and (b) a reserve at least equal to three months' rent and other charges that could be payable to any such Person, unless it has executed a Lien Waiver.

Report: as defined in **Section 12.2.3**.

Reportable Event: any event set forth in Section 4043(c) of ERISA, other than an event for which the 30 day notice period has been waived.

Requesting Borrower: with respect to any Letter of Credit, the Borrower who requested the issuance of such Letter of Credit.

Required Lenders: two or more unaffiliated Lenders holding more than 50% of (a) the aggregate outstanding Revolver Commitments; or (b) after termination of the Revolver Commitments, the aggregate outstanding Revolver Loans and LC Obligations or, upon Full Payment of all Revolver Loans and LC Obligations, the aggregate remaining Obligations; provided, that Revolver Commitments, Revolver Loans and other Obligations held by a Defaulting Lender and its Affiliates shall be disregarded in making such calculation, but any related Fronting Exposure shall be deemed held as a Revolver Loan or LC Obligation by the Lender that funded the applicable Revolver Loan or issued the applicable Letter of Credit.

Restricted Investment: any Investment by a Borrower or Subsidiary, other than (a) Investments in Subsidiaries to the extent existing on the U.S. Closing Date with respect to U.S. Borrowers and the Dutch Closing Date with respect to Dutch Borrower; (b) Cash Equivalents that are subject to Agent's Lien and control, pursuant to documentation in form and substance satisfactory to Agent; (c) loans and advances permitted under **Section 10.2.7**; and (d) after the Conversion Date, other Investments (including Permitted Acquisitions) so long as the Payment Conditions are satisfied with respect to each such Investment.

Restrictive Agreement: an agreement (other than a Loan Document) that conditions or restricts the right of any Borrower, Subsidiary or other Obligor to incur or repay Borrowed Money, to grant Liens on any assets, to declare or make Distributions, to modify, extend or renew any agreement evidencing Borrowed Money, or to repay any intercompany Debt.

Revolver Commitments: the sum of the Dutch Revolver Commitments and U.S. Revolver Commitments.

Revolver Loan: a Dutch Revolver Loan and/or U.S. Revolver Loan, as the context so requires.

Revolver Termination Date: if the Conversion Date occurs, the date which is 5 years from the Conversion Date as set forth in the written notice from Agent to Borrower agent confirming that the Conversion Date has occurred and if the Conversion Date does not occur, April 19, 2019.

S&P: Standard & Poor's Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc., or any successor acceptable to Agent.

Sanction: any sanction administered or enforced by the U.S. government (including OFAC), United Nations Security Council, European Union, U.K. government or other sanctions authority.

Secured Bank Product Obligations: the Dutch Secured Bank Product Obligations and/or U.S. Secured Bank Product Obligations, as the context so requires.

Secured Bank Product Provider: a Dutch Secured Bank Product Provider and/or U.S. Secured Bank Product Provider, as the context so requires.

Secured Parties: Dutch Secured Parties and U.S. Secured Parties.

Security Documents: the Guaranties, Mortgages, Deposit Account Control Agreements, Dutch Security Documents, and all other documents, instruments and agreements now or hereafter securing (or given with the intent to secure) any Obligations.

Senior Officer: the chairman of the board, president, chief executive officer or chief financial officer of a Borrower or, if the context requires, an Obligor.

Settlement Report: a report summarizing Revolver Loans and participations in LC Obligations outstanding as of a given settlement date, allocated to Lenders on a Pro Rata basis in accordance with their Revolver Commitments.

Solvent: as to any Person, such Person (a) owns Property whose fair salable value is greater than the amount required to pay all of its debts (including contingent, subordinated, unmatured and unliquidated liabilities); (b) owns Property whose present fair salable value (as defined below) is greater than the probable total liabilities (including contingent, subordinated, unmatured and unliquidated liabilities) of such Person as they become absolute and matured; (c) is able to pay all of its debts as they mature; (d) has capital that is not unreasonably small for its business and is sufficient to carry on its business and transactions and all business and transactions in which it is about to engage; (e) is not “insolvent” within the meaning of Section 101(32) of the Bankruptcy Code; and (f) has not incurred (by way of assumption or otherwise) any obligations or liabilities (contingent or otherwise) under any Loan Documents, or made any conveyance in connection therewith, with actual intent to hinder, delay or defraud either present or future creditors of such Person or any of its Affiliates. “Fair salable value” means the amount that could be obtained for assets within a reasonable time, either through collection or through sale under ordinary selling conditions by a capable and diligent seller to an interested buyer who is willing (but under no compulsion) to purchase.

Specified Obligor: an Obligor that is not then an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to **Section 5.11**).

Spot Rate: the exchange rate, as determined by Agent, that is applicable to conversion of one currency into another currency, which is (a) the exchange rate reported by Bloomberg (or other commercially available source designated by Agent) as of the end of the preceding business day in the financial market for the first currency; or (b) if such report is unavailable for any reason, the spot rate for the purchase of the first currency with the second currency as in effect during the preceding business day in Agent’s principal foreign exchange trading office for the first currency.

Stated Amount: the outstanding amount of a Letter of Credit, including any automatic increase or tolerance (whether or not then in effect) provided by the Letter of Credit or related LC Documents.

Subordinated Debt: Debt incurred by a Borrower that is expressly subordinate and junior in right of payment to Full Payment of all Obligations, and is on terms (including maturity, interest, fees, repayment, covenants and subordination) satisfactory to Agent.

Subsidiary: any entity at least 50% of whose voting securities or Equity Interests is owned by a Borrower or combination of Borrowers (including indirect ownership through other entities in which a Borrower directly or indirectly owns 50% of the voting securities or Equity Interests).

Supermajority Lenders: three or more unaffiliated Lenders holding more than 66 2/3% of (a) the aggregate outstanding Revolver Commitments; or (b) after termination of the Revolver Commitments, the aggregate outstanding Revolver Loans and LC Obligations or, upon Full Payment of all Revolver Loans and LC Obligations, the aggregate remaining Obligations; provided, that Revolver Commitments, Revolver Loans and other Obligations held by a Defaulting Lender and its Affiliates shall be disregarded in making such calculation, but any related Fronting Exposure shall be deemed held as a Revolver Loan or LC Obligation by the Lender that funded the applicable Revolver Loan or issued the applicable Letter of Credit.

Swap Obligations: with respect to an Obligor, its obligations under a Hedging Agreement that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

Swingline Loan: a Dutch Swingline Loan and/or a U.S. Swingline Loan, as the context so requires.

Taiwan Debt: Debt for Borrowed Money (a) incurred by SMCI BV prior to the U.S. Closing Date pursuant to that certain General Agreement for Omnibus Credit Lines dated January 17, 2018, by and among SMCI BV and Super Micro Computer, Inc. Taiwan, as co-borrowers, and CTBC Bank Co., Ltd., as lender, in an aggregate amount not exceeding \$70,000,000, and (b) to be incurred after the U.S. Closing Date by SMCI BV and Super Micro Computer, Inc. Taiwan, as co-borrowers, in an aggregate amount not exceeding \$50,000,000 extended by a lender or other financial institution, so long as, in each case, no Obligor’s assets secure the repayment of such Debt and no Obligor other than SMCI BV and Super Micro Computer, Inc. Taiwan has guaranteed or is otherwise obligated on such Debt and so long as the conversion to any borrowing by the Dutch borrowing has not occurred.

Taxes: all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

Trade Date: as defined in **Section 135**.

Transferee: any actual or potential Eligible Assignee, Participant or other Person acquiring an interest in any Obligations.

Trigger Period: the period (a) commencing on any day that (i) an Event of Default occurs, or (ii) Global Availability is less than the greater of (x) the Trigger Threshold Amount, and (y) 15% of the Global Borrowing Base; and (b) continuing until, during each of the preceding 60 consecutive days, no Event of Default has existed and Global Availability has been more than the greater of (x) Trigger Threshold Amount and (y) 15% of the Global Borrowing Base.

Trigger Threshold Amount: at any time prior to the Conversion Date, \$30,000,000 and upon and at any time after the Conversion Date, \$50,000,000.

UCC: the Uniform Commercial Code as in effect in the State of New York or, when the laws of any other jurisdiction govern the perfection or enforcement of any Lien, the Uniform Commercial Code of such jurisdiction.

Undisclosed Administration: means in relation to a Dutch Lender or its direct or indirect parent company the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official by a supervisory authority or regulator under or based on the law in the country where such Dutch Lender or such parent company is subject to home jurisdiction supervision if applicable law requires that such appointment is not to be publicly disclosed.

Unfunded Pension Liability: the excess of a Pension Plan's benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan's assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to the Code, ERISA or the Pension Protection Act of 2006 for the applicable plan year.

Unused Line Fee Rate: a per annum rate equal to (a) 0.375%, if average daily Global Revolver Usage was 50% or less of the Revolver Commitments during the preceding calendar month, or (b) 0.25%, if average daily Global Revolver Usage was more than 50% of the Revolver Commitments during such month.

Upstream Payment: a Distribution by a Subsidiary of a Borrower to such Borrower.

U.S. Accounts Formula Amount: the sum of (a) 85% of the Value of Eligible Non-Credit Insured Accounts of U.S. Borrowers, plus (b) the lesser of (i) 85% of the Value of Eligible Credit Insured Accounts of U.S. Borrowers and (ii) Insured Accounts Sublimit.

U.S. Availability: the U.S. Borrowing Base minus U.S. Revolver Usage.

U.S. Availability Reserve: the sum (without duplication) of (a) the U.S. Inventory Reserve; (b) the Rent and Charges Reserve with respect to a U.S. Borrower; (c) the U.S. Bank Product Reserve; (d) the aggregate amount of liabilities secured by Liens upon U.S. Collateral that are or may be senior to Agent's Liens (but imposition of any such reserve shall not waive an Event of Default arising therefrom); (e) and the Dilution Reserve with respect to U.S. Borrowers; and (f)

such additional reserves, in such amounts and with respect to such matters, as Agent in its Permitted Discretion may elect to impose from time to time.

U.S. Bank Product: any of the following products or services extended to a U.S. Borrower or Affiliate of a U.S. Borrower (other than Dutch Borrowers) by a Lender or any of its Affiliates: (a) Cash Management Services; (b) products under Hedging Agreements; (c) commercial credit card and merchant card services; and (d) leases, supply chain financing and other banking products or services, other than U.S. Letters of Credit.

U.S. Bank Product Reserve: the aggregate amount of reserves established by Agent from time to time in its discretion with respect to U.S. Secured Bank Product Obligations.

U.S. Base Rate: for any day, a per annum rate equal to the greater of (a) the Prime Rate for such day; (b) the Federal Funds Rate for such day, plus 0.50%; or (c) LIBOR, plus 1.0%; provided, that in no event shall the U.S. Base Rate be less than zero.

U.S. Borrowing Base: on any date of determination, an amount equal to the lesser of (a) the aggregate U.S. Revolver Commitments; or (b) the sum of the U.S. Accounts Formula Amount, plus the U.S. Inventory Formula Amount, minus the U.S. Availability Reserve.

U.S. Borrowing Base Report: a report of the U.S. Borrowing Base, in form and substance satisfactory to Agent.

U.S. Closing Date: as defined in **Section 6.1**.

U.S. Collateral: all Property described in **Section 7.1**, all Property described in any Security Documents as security for any U.S. Obligations, and all other Property that now or hereafter secures (or is intended to secure) any U.S. Obligations; provided, however, that U.S. Collateral shall not include any assets of any Foreign Subsidiaries.

U.S. Inventory Formula Amount: the lesser of (a) 70% of the Value of Eligible Inventory of U.S. Borrowers; or (b) 85% of the NOLV Percentage of the Value of Eligible Inventory of U.S. Borrowers; provided, that at any time prior to the Conversion Date, the amount calculated under this definition shall not exceed the Inventory Sublimit.

U.S. Inventory Reserve: reserves established by Agent to reflect factors that may negatively impact the Value of Inventory of U.S. Borrowers, including change in salability, obsolescence, seasonality, theft, shrinkage, imbalance, change in composition or mix, markdowns and vendor chargebacks.

U.S. LC Obligations: the sum of (a) all amounts owing by U.S. Borrowers for drawings under U.S. Letters of Credit; and (b) the Stated Amount of all outstanding U.S. Letters of Credit.

U.S. Lenders: lenders party to this Agreement (including Agent in its capacity as provider of U.S. Swingline Loans) and any Person who hereafter becomes a “U.S. Lender” pursuant to an Assignment, including any Lending Office of the foregoing.

U.S. Letter of Credit: any standby or documentary letter of credit, foreign guaranty, documentary bankers acceptance, indemnity, reimbursement agreement or similar instrument issued by Issuing Bank for the account or benefit of a U.S. Borrower or Affiliate of a U.S. Borrower (other than a Dutch Borrower if issued after the Dutch Closing Date).

U.S. Obligations: all (a) principal of and premium, if any, on the U.S. Revolver Loans, (b) U.S.LC Obligations and other obligations of U.S. Obligor with respect to U.S. Letters of Credit, (c) interest, expenses, fees, indemnification obligations, Extraordinary Expenses and other amounts payable by U.S. Obligor under Loan Documents, (d) U.S. Secured Bank Product Obligations, (e) the obligations of U.S. Obligor under any Guaranty, and (f) other Debts, obligations and liabilities of any kind owing by U.S. Obligor pursuant to the Loan Documents, in each case whether now existing or hereafter arising, whether evidenced by a note or other writing, whether allowed in any Insolvency Proceeding, whether arising from an extension of credit, issuance of a letter of credit, acceptance, loan, guaranty, indemnification or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, or joint or several; provided, that U.S. Obligations of a U.S. Obligor shall not include its Excluded Swap Obligations.

U.S. Obligor: each U.S. Borrower, Guarantor or other Person that is liable for payment of any U.S. Obligations or that has granted a Lien on its assets in favor of Agent to secure any U.S. Obligations.

U.S. Overadvance: as defined in **Section 2.1.6**.

U.S. Person: “United States Person” as defined in Section 7701(a)(30) of the Code.

U.S. Protective Advances: as defined in **Section 2.1.7**.

U.S. Revolver Commitment: for any U.S. Lender, its obligation to make U.S. Revolver Loans and to participate in U.S. LC Obligations up to the maximum principal amount shown on **Schedule 1.1**, as hereafter modified pursuant to **Sections 2.1.8** or **2.2.2** or an Assignment to which it is a party. “U.S. Revolver Commitments” means the aggregate amount of such commitments of all U.S. Lenders.

U.S. Revolver Loan: any loan made pursuant to **Section 2.1** or as a U.S. Swingline Loan.

U.S. Revolver Usage: (a) the aggregate amount of outstanding U.S. Revolver Loans; plus (b) the aggregate Stated Amount of outstanding U.S. Letters of Credit, except to the extent Cash Collateralized by U.S. Borrowers.

U.S. Secured Bank Product Obligations: Debt, obligations and other liabilities with respect to U.S. Bank Products owing by a U.S. Borrower or Affiliate of a U.S. Borrower (other than a Dutch Borrower if arising after the Dutch Closing Date) to a U.S. Secured Bank Product Provider; provided, that U.S. Secured Bank Product Obligations of a U.S. Obligor shall not include its Excluded Swap Obligations.

U.S. Secured Bank Product Provider: (a) Bank of America or any of its Affiliates; and (b) any other U.S. Lender, Affiliate of a U.S. Lender or a counterparty approved by Agent in its sole discretion, that is providing a U.S. Bank Product, provided such provider delivers written notice to Agent, in form and substance satisfactory to Agent, within 10 days following the later of the U.S. Closing Date or creation of the U.S. Bank Product, (i) describing the U.S. Bank Product and setting forth the maximum amount to be secured by the U.S. Collateral and the methodology to be used in calculating such amount, and (ii) agreeing to be bound by **Section 12.13**.

U.S. Secured Parties: Agent, Issuing Bank (with respect to U.S. Letters of Credit), U.S. Lenders and U.S. Secured Bank Product Providers.

U.S. Swingline Loan: any Borrowing of U.S. Revolver Loans funded with Agent's funds, until such Borrowing is settled among U.S. Lenders or repaid by U.S. Borrowers.

U.S. Tax Compliance Certificate: as defined in **Section 5.10.2(b)(iii)**.

Value: (a) for Inventory, its value determined on the basis of the lower of cost or market, calculated on a first-in, first-out basis, and excluding any portion of cost attributable to intercompany profit among Borrowers and their Affiliates; and (b) for an Account, its face amount, net of any returns, rebates, discounts (calculated on the shortest terms), credits, allowances or Taxes (including sales, excise or other taxes) that have been or could be claimed by the Account Debtor or any other Person.

Write-Down and Conversion Powers: the write-down and conversion powers of the applicable EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which powers are described in the EU Bail-In Legislation Schedule.

1.2 Accounting Terms. Under the Loan Documents (except as otherwise specified therein), all accounting terms shall be interpreted, all accounting determinations shall be made, and all financial statements shall be prepared, in accordance with GAAP applied on a basis consistent with the most recent audited financial statements of Borrowers delivered to Agent before the U.S. Closing Date and using the same inventory valuation method as used in such financial statements, except for any change required or permitted by GAAP if Borrowers' certified public accountants concur in such change, the change is disclosed to Agent, and all relevant provisions of the Loan Documents are amended in a manner satisfactory to Required Lenders to take into account the effects of the change.

1.3 Uniform Commercial Code. As used herein, the following terms are defined in accordance with the UCC in effect in the State of New York from time to time (as the same may be modified by **Section 1.6**): “Account,” “Account Debtor,” “Chattel Paper,” “Commercial Tort Claim,” “Deposit Account,” “Document,” “Equipment,” “General Intangibles,” “Goods,” “Instrument,” “Investment Property,” “Letter-of-Credit Right” and “Supporting Obligation.”

1.4 Certain Matters of Construction. The terms “herein,” “hereof,” “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. In the computation of periods of time from a specified date to a later specified date, “from” means “from and including,” and “to” and “until” each mean “to but excluding.” The terms “including” and “include” shall mean “including, without limitation” and, for purposes of each Loan Document, the parties agree that the rule of *ejusdem generis* shall not be applicable to limit any provision. Section titles appear as a matter of convenience only and shall not affect the interpretation of any Loan Document. All references to (a) laws include all related regulations, interpretations, supplements, amendments and successor provisions; (b) any document, instrument or agreement include any amendments, waivers and other modifications, extensions or renewals (to the extent permitted by the Loan Documents); (c) any section mean, unless the context otherwise requires, a section of this Agreement; (d) any exhibits or schedules mean, unless the context otherwise requires, exhibits and schedules attached hereto, which are hereby incorporated by reference; (e) any Person include successors and assigns; (f) time of day means time of day in the Applicable Time Zone; or (g) discretion of Agent, Issuing Bank or any Lender mean the sole and absolute discretion of such Person exercised at any time. All determinations (including calculations of Dutch Borrowing Base, U.S. Borrowing Base and financial covenants) made from time to time under the Loan Documents shall be made in light of the circumstances existing at such time. Dutch Borrowing Base and U.S. Borrowing Base calculations shall be consistent with historical methods of valuation and calculation, and otherwise satisfactory to Agent (and not necessarily calculated in accordance with GAAP). Borrowers shall have the burden of establishing any alleged negligence, misconduct or lack of good faith by Agent, Issuing Bank or any Lender under any Loan Documents. No provision of any Loan Documents shall be construed against any party by reason of such party having, or being deemed to have, drafted the provision. Reference to a Borrower’s “knowledge” or similar concept means actual knowledge of a Senior Officer, or knowledge that a Senior Officer would have obtained if

he or she had engaged in good faith and diligent performance of his or her duties, including reasonably specific inquiries of employees or agents and a good faith attempt to ascertain the matter.

1.5 Currency Equivalents.

1.5.1 Calculations. All references in the Loan Documents to Revolver Loans, Letters of Credit, Obligations, Dutch Borrowing Base, U.S. Borrowing Base components and other amounts shall be denominated in Dollars, unless expressly provided otherwise. The Dollar equivalent of any amounts denominated or reported under a Loan Document in a currency other than Dollars shall be determined by Agent on a daily basis, based on the current Spot Rate. Borrowers shall report Value and other Dutch Borrowing Base and U.S. Borrowing Base components to Agent in the currency invoiced by Borrowers (for Accounts) or shown in Borrowers' financial records (for all other assets), and unless expressly provided otherwise, shall deliver financial statements and calculate financial covenants in Dollars. Notwithstanding anything herein to the contrary, if an Obligation is funded or expressly denominated in a currency other than Dollars, Borrowers shall repay such Obligation in such other currency.

1.5.2 Judgments. If, in connection with obtaining judgment in any court, it is necessary to convert a sum from the currency provided under a Loan Document ("Agreement Currency") into another currency, the Spot Rate shall be used as the rate of exchange. Notwithstanding any judgment in a currency ("Judgment Currency") other than the Agreement Currency, a Borrower shall discharge its obligation in respect of any sum due under a Loan Document only if, on the Business Day following receipt by Agent of payment in the Judgment Currency, Agent can use the amount paid to purchase the sum originally due in the Agreement Currency. If the purchased amount is less than the sum originally due, such Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify Agent and Lenders against such loss. If the purchased amount is greater than the sum originally due, Agent shall return the excess amount to such Borrower (or to the Person legally entitled thereto).

1.6 Dutch Terms. In this Agreement, where it relates to a Dutch person, a reference to:

1.6.1 a necessary action to authorise, where applicable, includes without limitation:

- (a) any action required to comply with the Dutch Works Councils Act; and
- (b) obtaining a positive advice (*positief advies*) from the competent works council(s);

1.6.2 Accounts includes all *vorderingen* (as used in the Dutch Civil Code);

1.6.3 a Lien includes any mortgage (*hypotheek*), pledge (*pandrecht*), retention of title arrangement (*eigendomsvoorbehoud*), privilege (*voorrecht*), right of retention (*recht van retentie*), right to reclaim goods (*recht van reclame*), and, in general, any right in rem

(*beperkt recht*), created for the purpose of granting security (*goederenrechtelijk zekerheidsrecht*);

1.6.4 a winding up or dissolution includes a Dutch person being declared bankrupt (*failliet verklaard*) or dissolved (*ontbonden*);

1.6.5 any step or procedure taken in connection with insolvency proceedings includes a Dutch person having filed a notice under section 36 of the Tax Collection Act of the Netherlands (*Invorderingswet 1990*);

1.6.6 a trustee, receiver or administrator includes a *curator*;

1.6.7 an administrator includes a *bewindvoerder*;

1.6.8 a liquidator includes a *vereffenaar*;

1.6.9 a group includes a *groep*;

1.6.10 a subsidiary includes a *dochtermaatschappij*;

1.6.11 an affiliate includes a *groepsmaatschappij*;

1.6.12 a merger includes a *juridische fusie, aandelenfusie* and *bedrijfsfusie*;

(a) a charter document includes an *akte van oprichting* and *statuten*; and

(b) a director includes a *bestuurder*.

SECTION 2. CREDIT FACILITIES

2.1 Revolver Commitment.

2.1.1 Dutch Revolver Loans. Each Dutch Lender agrees, severally on a Pro Rata basis up to its Dutch Revolver Commitment, on the terms set forth herein, to make Dutch Revolver Loans to Dutch Borrowers from time to time through the Commitment Termination Date. The Dutch Revolver Loans may be repaid and reborrowed as provided herein. In no event shall Dutch Lenders have any obligation to honor a request for a Dutch Revolver Loan if Dutch Revolver Usage at such time plus the requested Dutch Revolver Loan would exceed the Dutch Borrowing Base.

2.1.2 U.S. Revolver Loans. Each U.S. Lender agrees, severally on a Pro Rata basis up to its U.S. Revolver Commitment, on the terms set forth herein, to make U.S. Revolver Loans to U.S. Borrowers from time to time through the Commitment Termination Date. The U.S. Revolver Loans may be repaid and reborrowed as provided herein. In no event shall U.S. Lenders have any obligation to honor a request for a U.S. Revolver Loan if U.S. Revolver Usage at such time plus the requested U.S. Revolver Loan would exceed the U.S. Borrowing Base. Each U.S. Lender agrees and acknowledges that it is making U.S. Revolver Loans to U.S. Borrowers based primarily on the U.S. Borrowers' ability to repay the U.S. Revolver Loans, and not based on the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Dutch Borrower.

2.1.3 Notes. Revolver Loans and interest accruing thereon shall be evidenced by the records of Agent and the applicable Lender. At the request of a Lender, the applicable Borrower shall deliver promissory note(s) to such Lender, evidencing its Revolver Loans.

2.1.4 Use of Proceeds. The proceeds of Revolver Loans shall be used by Borrowers solely (a) to satisfy existing Debt; (b) to pay fees and transaction expenses associated with the closing of this credit facility; (c) to pay Obligations in accordance with this Agreement; and (d) for lawful corporate purposes of Borrowers, including working capital. Borrowers shall not, directly or indirectly, use any Letter of Credit or Revolver Loan proceeds, nor use, lend, contribute or otherwise make available any Letter of Credit or Revolver Loan proceeds to any Subsidiary, joint venture partner or other Person, (i) to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of issuance of the Letter of Credit or funding of the Revolver Loan, is the target of any Sanction; or (ii) in any manner that would result in a violation of a Sanction by any Person (including any Secured Party or other individual or entity participating in any transaction); or (iii) for any purpose that would breach the U.S. Foreign Corrupt Practices Act of 1977, UK Bribery Act 2010 or similar law in any jurisdiction.

2.1.5 Voluntary Reduction or Termination of Revolver Commitments.

(a) The Revolver Commitments shall terminate on the Revolver Termination Date, unless sooner terminated in accordance with this Agreement. Upon at least 30 days' prior written notice to Agent, Dutch Borrowers may, at their option, terminate the Dutch Revolver Commitments and U.S. Borrowers may, at their option, terminate the U.S. Revolver Commitments; provided, that if the U.S. Revolver Commitments are terminated, all Revolver Commitments and this credit facility shall be contemporaneously terminated. Any notice of termination given by Borrowers shall be irrevocable. On the termination date, Borrowers shall make Full Payment of all Obligations.

(b) Dutch Borrowers may permanently reduce the Dutch Revolver Commitments, on a ratable basis for all Dutch Lenders, and U.S. Borrowers may permanently reduce the U.S. Revolver Commitments, on a ratable basis for all U.S. Lenders, in each case, upon at least 30 days' prior written notice to Agent, which notice shall specify the amount of the reduction and shall be irrevocable once given. Each reduction shall be in a minimum amount of \$5,000,000, or an increment of \$1,000,000 in excess thereof. The Dutch Revolver Commitments shall at no time be reduced by Dutch Borrowers to an amount less than \$10,000,000 and the U.S. Revolver Commitments shall at no time be reduced by U.S. Borrowers to an amount less than \$50,000,000.

2.1.6 Overadvances.

(a) Dutch Overadvances. If Dutch Revolver Usage exceeds the Dutch Borrowing Base ("Dutch Overadvance") at any time, the excess shall be payable by Dutch Borrowers **on demand** by Agent and shall constitute a Dutch Obligation secured by the Dutch Collateral, entitled to all benefits of the Loan Documents. Agent may require Dutch Lenders to fund Dutch Revolver Loans that cause or constitute a Dutch Overadvance and to forbear from requiring Dutch Borrowers to cure a Dutch Overadvance, as long as the total Dutch Overadvance does not exceed 10% of the Dutch Borrowing Base and does not continue for more than 30 consecutive days without the consent of Required Lenders. In no event shall Dutch Revolver Loans be required that would cause Dutch Revolver Usage to exceed the aggregate Dutch Revolver Commitments or that would cause Global Revolver Usage to exceed the aggregate Revolver Commitments. No funding or sufferance of a Dutch Overadvance shall constitute a waiver by Agent or Lenders of the Event of Default caused thereby. No Dutch Obligor shall be a beneficiary of this Section nor authorized to enforce any of its terms.

(b) U.S. Overadvances. If U.S. Revolver Usage exceeds the U.S. Borrowing Base ("U.S. Overadvance") at any time, the excess shall be payable by U.S. Borrowers **on demand** by Agent and shall constitute a U.S. Obligation secured by the U.S. Collateral, entitled to all benefits of the Loan Documents. Agent may require U.S. Lenders to fund U.S. Revolver Loans that cause or constitute a U.S. Overadvance and to forbear from requiring U.S. Borrowers to cure a U.S. Overadvance, as long as the total U.S. Overadvance does not exceed 10% of the U.S. Borrowing Base and does not continue for more than 30 consecutive days without the consent of Required Lenders. In no event shall U.S. Revolver Loans be required that would cause U.S. Revolver Usage to exceed the aggregate U.S. Revolver Commitments or that would cause Global Revolver Usage to exceed the aggregate Revolver Commitments. No funding or sufferance of a U.S. Overadvance shall constitute a waiver by Agent or Lenders of the Event of Default caused thereby. No U.S. Obligor shall be a beneficiary of this Section nor authorized to enforce any of its terms.

2.1.7 Protective Advances.

(a) Dutch Protective Advances. Agent shall be authorized, in its discretion, at any time after the Dutch Closing Date that any conditions in **Section 6** are not satisfied, to make Dutch Revolver Loans ("Dutch Protective Advances") (a) up to an aggregate amount equal to 10% of the Dutch Borrowing Base outstanding at any time, if Agent deems such Dutch Revolver Loans necessary or desirable to preserve or protect Dutch Collateral, or to enhance the collectability or repayment of Dutch Obligations, as long as such Dutch Revolver Loans do not cause Dutch Revolver Usage to exceed the aggregate Dutch Revolver Commitments; or (b) to pay any other amounts chargeable to Dutch Obligors under any Loan Documents, including interest, costs, fees and expenses. Lenders shall participate on a Pro Rata basis in Dutch Protective Advances outstanding from time to time. Required Lenders may at any time revoke Agent's authority to make further Dutch Protective Advances under clause (a) by written notice to Agent. Absent such revocation, Agent's determination that funding of a Dutch Protective Advance is appropriate shall be conclusive.

(b) U.S. Protective Advances. Agent shall be authorized, in its discretion, at any time that any conditions in **Section 6** are not satisfied, to make U.S. Revolver Loans ("U.S. Protective Advances") (a) up to an aggregate amount equal to 10% of the U.S. Borrowing Base outstanding at any time, if Agent deems such U.S. Revolver Loans necessary or desirable to preserve or protect Collateral, or to enhance the collectability or repayment of Obligations, as long as such U.S. Revolver Loans do not cause U.S. Revolver Usage to exceed the aggregate U.S. Revolver Commitments; or (b) to pay any other amounts chargeable to U.S. Obligors under any Loan Documents, including interest, costs, fees

and expenses. U.S. Lenders shall participate on a Pro Rata basis in U.S. Protective Advances outstanding from time to time. Required Lenders may at any time revoke Agent's authority to make further U.S. Protective Advances under clause (a) by written notice to Agent. Absent such revocation, Agent's determination that funding of a U.S. Protective Advance is appropriate shall be conclusive.

2.1.8 Increase in Revolver Commitments. At any time after the Conversion Date, U.S. Borrowers may request an increase in U.S. Revolver Commitments from time to time upon not less than 45 days' notice to Agent, as long as (a) the requested increase is in a minimum amount of \$10,000,000 and is offered on the same terms as existing U.S. Revolver Commitments, except for a closing fee specified by U.S. Borrowers and Agent, and (b) total increases under this Section do not exceed \$100,000,000 and no more than 3 increases are made. Agent shall promptly notify U.S. Lenders of the requested increase and, within 10 Business Days thereafter, each U.S. Lender shall notify Agent if and to what extent such U.S. Lender commits to increase its U.S. Revolver Commitment. Any U.S. Lender not responding within such period shall be deemed to have declined an increase. If U.S. Lenders fail to commit to the full requested increase, Eligible Assignees may issue additional U.S. Revolver Commitments and become U.S. Lenders hereunder. Agent may allocate, in its discretion, the increased U.S. Revolver Commitments among committing U.S. Lenders and, if necessary, Eligible Assignees. Total U.S. Revolver Commitments shall be increased by the requested amount (or such lesser amount committed by U.S. Lenders and Eligible Assignees) on a date agreed upon by Agent and Borrower Agent, provided (i) the conditions set forth in **Section 6.3** are satisfied at such time; and (ii) flood insurance diligence and documentation have been completed as required by all Flood Laws or otherwise in a manner satisfactory to all Lenders. Agent, U.S. Borrowers, and the new and existing U.S. Lenders shall execute and deliver such documents and agreements as Agent deems appropriate to evidence the increase in and allocations of U.S. Revolver Commitments. On the effective date of an increase, the U.S. Revolver Usage and other exposures under the U.S. Revolver Commitments shall be reallocated among U.S. Lenders, and settled by Agent as necessary, in accordance with Lenders' adjusted shares of such commitments.

2.2 Reallocation of Revolver Commitments.

2.2.1 Reserved.

2.2.2 Commitment Reallocation.

(a) Reallocation Mechanism. At any time after the Dutch Closing Date, Borrower Agent may request that Dutch Lenders and U.S. Lenders change the then current allocation of their respective Revolver Commitments in order to effect an increase or decrease of such respective Revolver Commitments, with any such increase or decrease in their Dutch Revolver Commitments to Dutch Borrowers to be accompanied by a concurrent and equal decrease or increase, as applicable, in their U.S. Revolver Commitments (each, a "Reallocation"). Any such Reallocation shall be subject to the following conditions: (i) Borrower Agent shall have provided to Agent a written notice (in reasonable detail) at least thirty (30) Business Days prior to the requested effective date (which effective date shall be the first day of the subsequent Fiscal Quarter) of such Reallocation (the "Reallocation Date") setting forth the proposed Reallocation Date and the amounts of the proposed Revolver Commitments reallocations to be effected, (ii) any such Reallocation shall increase or decrease the applicable Revolver Commitments in increments of \$5,000,000, and, after giving effect to any such Reallocation, the aggregate Dutch Revolver Commitments shall not exceed 30% of the aggregate Revolver Commitments, (iii) after giving effect to the Reallocation, each Lender shall hold the same Pro Rata share of all of the Revolver Commitments as it did prior to such Reallocation, (iv) no Default or Event of Default shall have occurred and be continuing either as of the date of such request or on the Reallocation Date (both immediately before and after giving effect to such Reallocation), (v) any increase or decrease in a Revolver Commitment of a Lender in its respective Dutch Revolver Commitment or U.S. Revolver Commitment shall result in a concurrent decrease or increase in its respective Dutch Revolver Commitment or U.S. Revolver Commitment such that the sum of all the Revolver Commitments of such Lender after giving effect to such Reallocation shall equal the aggregate amount of the Revolver Commitments of such Lender in effect immediately prior to such Reallocation, (vi) after giving effect to such Reallocation, no Overadvance, Dutch Overadvance or U.S. Overadvance would exist or would result therefrom, (vii) at least three (3) Business Days prior to the proposed Reallocation Date, a Senior Officer of Borrower Agent shall have delivered to Agent a certificate certifying as to compliance with preceding clauses (i) through (vi) and demonstrating (in reasonable detail) the calculations required in connection therewith, (viii) Agent consents to such Reallocation in its Permitted Discretion; and (ix) no more than one Reallocation is requested in any 3-month period and no more than two Reallocations are requested in any 12-month period.

(b) Reallocations Generally. Agent shall promptly notify such Lenders of the Reallocation Date and the amount of the affected Revolver Commitment of such Lenders as a result thereof. The respective Pro Rata shares of Lenders shall thereafter, to the extent applicable, be determined based on such reallocated amounts (subject to any

subsequent changes thereto).

2.3 Letter of Credit Facility.

2.3.1 Issuance of Letters of Credit. Issuing Bank shall issue Letters of Credit from time to time until the Commitment Termination Date, on the terms set forth herein, including the following:

(a) Each Borrower acknowledges that Issuing Bank's issuance of any Letter of Credit is conditioned upon Issuing Bank's receipt of a LC Application with respect to the requested Letter of Credit, as well as such other instruments and agreements as Issuing Bank may customarily require for issuance of a letter of credit of similar type and amount. Issuing Bank shall have no obligation to issue any Letter of Credit unless (i) Issuing Bank receives a LC Request and LC Application at least three Business Days prior to the requested date of issuance; (ii) each LC Condition is satisfied; and (iii) if a Defaulting Lender exists, such Lender or Borrowers have entered into arrangements satisfactory to Agent and Issuing Bank to eliminate any Fronting Exposure associated with such Lender. If, in sufficient time to act, Issuing Bank receives written notice from Agent or Required Lenders that a LC Condition has not been satisfied, Issuing Bank shall not issue the requested Letter of Credit. Prior to receipt of any such notice, Issuing Bank shall not be deemed to have knowledge of any failure of LC Conditions.

(b) Letters of Credit may be requested by any (i) U.S. Borrower to support obligations incurred in the Ordinary Course of Business, (ii) Dutch Borrower to support obligations incurred in the Ordinary Course of Business, or (iii) as otherwise approved by Agent. Increase, renewal or extension of a Letter of Credit shall be treated as issuance of a new Letter of Credit, except that Issuing Bank may require a new LC Application in its discretion.

(c) Each Borrower assumes all risks of the acts, omissions or misuses of any Letter of Credit by the beneficiary with respect to any Letter of Credit issued at its request. In connection with any Letter of Credit, none of Agent, Issuing Bank or any Lender shall be responsible for the existence, character, quality, quantity, condition, packing, value or delivery of any goods purported to be represented by any Documents; any differences or variation in the character, quality, quantity, condition, packing, value or delivery of any goods from that expressed in any Documents; the form, validity, sufficiency, accuracy, genuineness or legal effect of any Documents or of any endorsements thereon; the time, place, manner or order in which shipment of goods is made; partial or incomplete shipment of, or failure to ship, any goods referred to in a Letter of Credit or Documents; any deviation from instructions, delay, default or fraud by any shipper or other Person in connection with any goods, shipment or delivery; any breach of contract between a shipper or vendor and a Borrower; errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, telecopy, e-mail, telephone or otherwise; errors in interpretation of technical terms; the misapplication by a beneficiary of any Letter of Credit or the proceeds thereof; or any consequences arising from causes beyond the control of Issuing Bank, Agent or any Lender, including any act or omission of a Governmental Authority. Borrowers shall take all action to avoid and mitigate any damages relating to any Letter of Credit or claimed against Issuing Bank, Agent or any Lender, including through enforcement of any available rights against a beneficiary. Issuing Bank shall be fully subrogated to the rights and remedies of any beneficiary whose claims against any Borrower are discharged with proceeds of a Letter of Credit. The rights and remedies of Issuing Bank under the Loan Documents shall be cumulative.

(d) In connection with its administration of and enforcement of rights or remedies under any Letters of Credit or LC Documents, Issuing Bank shall be entitled to act, and shall be fully protected in acting, upon any certification, documentation or communication in whatever form believed by Issuing Bank, in good faith, to be genuine and correct and to have been signed, sent or made by a proper Person. Issuing Bank may use legal counsel, accountants and other experts to advise it concerning its obligations, rights and remedies, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by such experts. Issuing Bank may employ agents and attorneys-in-fact in connection with any matter relating to Letters of Credit or LC Documents, and shall not be liable for the negligence or misconduct of agents and attorneys-in-fact selected with reasonable care.

2.3.2 Reimbursement; Participations.

(a) If Issuing Bank honors any request for payment under a Letter of Credit, the Requesting Borrower shall pay to Issuing Bank, on the same day ("Reimbursement Date"), the amount paid by Issuing Bank under such Letter of Credit, together with interest at the interest rate for Revolver Loans related to the currency denominating such Letter of Credit from the Reimbursement Date until payment by Requesting Borrower. The obligation of Dutch Borrowers to reimburse Issuing Bank for any payment made under a Dutch Letter of Credit shall be absolute, unconditional, irrevocable, and joint and several, and shall be paid without regard to any lack of validity or enforceability of any Dutch Letter of Credit or the existence of any claim, setoff, defense or other right that any Dutch Obligor may have at any time

against the beneficiary. The obligation of U.S. Borrowers to reimburse Issuing Bank for any payment made under a U.S. Letter of Credit shall be absolute, unconditional, irrevocable, and joint and several, and shall be paid without regard to any lack of validity or enforceability of any U.S. Letter of Credit or the existence of any claim, setoff, defense or other right that any U.S. Obligor may have at any time against the beneficiary. Whether or not Borrower Agent submits a Notice of Borrowing, Requesting Borrower shall be deemed to have requested a Borrowing of Revolver Loans in an amount necessary to pay all amounts due Issuing Bank on any Reimbursement Date and each Dutch Lender and U.S. Lender, as applicable, shall fund its Pro Rata share of such Borrowing whether or not the applicable Revolver Commitments have terminated, an applicable Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied.

(b) Each Lender providing a Revolver Commitment to the Requesting Borrower, hereby irrevocably and unconditionally purchases from Issuing Bank, without recourse or warranty, an undivided Pro Rata participation in all LC Obligations of the Requesting Borrower relating to such Letter of Credit outstanding from time to time. Issuing Bank is issuing Letters of Credit in reliance upon this participation. If Requesting Borrowers do not make a payment to Issuing Bank when due hereunder, Agent shall promptly notify Lenders providing a Revolver Commitment to the Requesting Borrower and each such Lender shall within one Business Day after such notice pay to Agent, for the benefit of Issuing Bank, the Lender's Pro Rata share of such payment. Upon request by a Lender, Issuing Bank shall provide copies of Letters of Credit and LC Documents in its possession at such time.

(c) The obligation of each applicable Lender to make payments to Agent for the account of Issuing Bank in connection with Issuing Bank's payment under a Letter of Credit shall be absolute, unconditional and irrevocable, not subject to any counterclaim, setoff, qualification or exception whatsoever, and shall be made in accordance with this Agreement under all circumstances, irrespective of any lack of validity or unenforceability of any Loan Documents; any draft, certificate or other document presented under a Letter of Credit having been determined to be forged, fraudulent, noncompliant, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; any waiver by Issuing Bank of a requirement that exists for its protection (and not a Requesting Borrower's protection) or that does not materially prejudice a Requesting Borrower; any honor of an electronic demand for payment even if a draft is required; any payment of an item presented after a Letter of Credit's expiration date if authorized by the UCC or applicable customs or practices; or any setoff or defense that an Obligor may have with respect to any Obligations. Issuing Bank does not assume any responsibility for any failure or delay in performance or any breach by any Borrower or other Person of any obligations under any LC Documents. Issuing Bank does not make to Lenders any express or implied warranty, representation or guaranty with respect to any Letter of Credit, Collateral, LC Document or Obligor. Issuing Bank shall not be responsible to any Lender for any recitals, statements, information, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of any LC Documents; the validity, genuineness, enforceability, collectability, value or sufficiency of any Collateral or the perfection of any Lien therein; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor.

(d) No Issuing Bank Indemnitee shall be liable to any Lender or other Person for any action taken or omitted to be taken in connection with any Letter of Credit or LC Document except as a result of its gross negligence or willful misconduct. Issuing Bank may refrain from taking any action with respect to a Letter of Credit until it receives written instructions (and in its discretion, appropriate assurances) from the Lenders.

2.3.3 Cash Collateral. At Agent's or Issuing Bank's request, Requesting Borrower shall Cash Collateralize (a) the Fronting Exposure of any applicable Defaulting Lender, and (b) all outstanding Letters of Credit issues at its request if an Event of Default exists, the Commitment Termination Date occurs or the Revolver Termination Date is scheduled to occur within 20 Business Days. If Requesting Borrower fails to provide any Cash Collateral as required hereunder, the applicable Lenders may (and shall upon direction of Agent) advance, as Revolver Loans of the Requesting Borrower, the amount of Cash Collateral required (whether or not the Revolver Commitments have terminated, an Overadvance exists or the conditions in **Section 6** are satisfied).

2.3.4 Resignation of Issuing Bank. Issuing Bank may resign at any time upon notice to Agent and Borrowers, and any resignation of Agent hereunder shall automatically constitute its concurrent resignation as Issuing Bank. From the effective date of its resignation, Issuing Bank shall have no obligation to issue, amend, renew, extend or otherwise modify any Letter of Credit, but shall otherwise have all rights and obligations of an Issuing Bank hereunder relating to any Letter of Credit issued by it prior to such date. A replacement Issuing Bank may be appointed by written agreement among Agent, Borrower Agent and the new Issuing Bank.

SECTION 3. INTEREST, FEES AND CHARGES

3.1 **Interest.**

3.1.1 Rates and Payment of Interest.

(a) The Obligations shall bear interest (i) if a Dutch Revolver Loan, at LIBOR, plus the Applicable Margin; provided that if LIBOR is unavailable for any reason, Dutch Revolver Loans shall bear interest at the Foreign Base Rate, plus 1.50%; (ii) if a U.S. Revolver Loan, at LIBOR, plus the Applicable Margin; provided that if LIBOR is unavailable for any reason, U.S. Revolver Loans shall bear interest at the U.S. Base Rate, plus 0.50%, (iii) if any other Dutch Obligation (including, to the extent permitted by law, interest not paid when due), at LIBOR in effect from time to time, plus the Applicable Margin for Dutch Revolver Loans; provided that if LIBOR is unavailable for any reason, such Dutch Obligations shall bear interest at the Foreign Base Rate, plus 1.50%, and (vi) if any other U.S. Obligation (including, to the extent permitted by law, interest not paid when due), at LIBOR in effect from time to time, plus the Applicable Margin for U.S. Revolver Loans; provided that if LIBOR is unavailable for any reason, such U.S. Obligations shall bear interest at the U.S. Base Rate, plus 0.50%.

(b) During an Insolvency Proceeding with respect to any Borrower, or during any other Event of Default if Agent or Required Lenders in their discretion so elect and notify the Borrower Agent in writing, Obligations shall bear interest at the Default Rate (whether before or after any judgment), payable **on demand**.

(c) Interest shall accrue from the date a Revolver Loan is advanced or Obligation is incurred or payable, until paid in full by Borrowers, and shall in no event be less than zero at any time. Interest accrued on the Revolver Loans shall be due and payable in arrears, (i) on the first day of each month; (ii) on any date of prepayment, with respect to the principal amount being prepaid; and (iii) on the Commitment Termination Date. Interest accrued on any other Obligations shall be due and payable as provided in the applicable agreements or, if no payment date is specified, **on demand**.

3.1.2 Reserved.

3.1.3 Reserved.

3.1.4 Interest Rate Not Ascertainable. If, due to any circumstance affecting the London interbank market, Agent determines that adequate and fair means do not exist for ascertaining LIBOR on any applicable date, then Agent shall immediately notify Borrowers of such determination. Until Agent notifies Borrowers that such circumstance no longer exists, the obligation of Lenders to make affected LIBOR Loans shall be suspended.

3.2 **Fees.**

3.2.1 Unused Line Fee. U.S. Borrowers shall pay to Agent, for the Pro Rata benefit of Lenders, a fee equal to the Unused Line Fee Rate times the amount by which the Revolver Commitments exceed the average daily Global Revolver Usage during any month. Such fee shall be payable in arrears, on the first day of each month and on the Commitment Termination Date.

3.2.2 LC Facility Fees.

(a) Dutch Borrowers shall pay (i) to Agent, for the Pro Rata benefit of applicable Dutch Lenders, a fee equal to the Applicable Margin in effect for Dutch Revolver Loans times the average daily Stated Amount of Dutch Letters of Credit, which fee shall be payable monthly in arrears, on the first day of each month; (ii) to Agent, for its own account, a fronting fee equal to 0.125% per annum on the Stated Amount of each applicable Dutch Letter of Credit, which fee shall be payable monthly in arrears, on the first day of each month; and (iii) to Issuing Bank, for its own account, all customary charges associated with the issuance, amending, negotiating, payment, processing, transfer and administration of Dutch Letters of Credit, which charges shall be paid as and when incurred. During an Event of Default, the fee payable under clause (i) shall be increased by 2% per annum.

(b) U.S. Borrowers shall pay (i) to Agent, for the Pro Rata benefit of applicable U.S. Lenders, a fee equal to the Applicable Margin in effect for U.S. Revolver Loans times the average daily Stated Amount of U.S. Letters of Credit, which fee shall be payable monthly in arrears, on the first day of each month; (ii) to Agent, for its own account, a fronting fee equal to 0.125% per annum on the Stated Amount of each applicable U.S. Letter of Credit, which fee shall be payable monthly in arrears, on the first day of each month; and (iii) to Issuing Bank, for its own account, all customary charges associated with the issuance, amending, negotiating, payment, processing, transfer and administration of U.S. Letters of Credit, which charges shall be paid as and when incurred. During an Event of Default, the fee payable under clause (i) shall be increased by 2% per annum.

3.2.3 Fee Letters. Borrowers shall pay all fees set forth in any fee letter executed in connection with this Agreement.

3.3 Computation of Interest, Fees, Yield Protection. All interest, as well as fees and other charges calculated on a per annum basis, shall be computed for the actual days elapsed, based on a year of 360 days; provided that interest, fees and charges in Sterling calculated on a per annum basis, shall be computed for the actual days elapsed, based on a year of 365 days. Each determination by Agent of any interest, fees or interest rate hereunder shall be final, conclusive and binding for all purposes, absent manifest error. All fees shall be fully earned when due and shall not be subject to rebate, refund or proration. All fees payable under **Section 3.2** are compensation for services and are not, and shall not be deemed to be, interest or any other charge for the use, forbearance or detention of money. A certificate as to amounts payable by Borrowers under **Section 3.4, 3.6, 3.7, 3.9** or **5.9**, submitted to Borrower Agent by Agent or the affected Lender shall be final, conclusive and binding for all purposes, absent manifest error, and Borrowers shall pay such amounts to the appropriate party within 10 days following receipt of the certificate.

3.4 Reimbursement Obligations. Borrowers shall pay all Extraordinary Expenses promptly upon request. Borrowers shall also reimburse Agent for all legal, accounting, appraisal, consulting, and other fees and expenses incurred by it in connection with (a) negotiation and preparation of any Loan Documents, including any modification thereof; (b) administration of and actions relating to any Collateral, Loan Documents and transactions contemplated thereby, including any actions taken to perfect or maintain priority of Agent's Liens on any Collateral, to maintain any insurance required hereunder or to verify Collateral; and (c) subject to the limits of **Section 10.1.1(b)**, any examination or appraisal with respect to any Obligor or Collateral by Agent's personnel or a third party. All legal, accounting and consulting fees shall be charged to Borrowers by Agent's professionals at their full hourly rates, regardless of any alternative fee arrangements that Agent, any Lender or any of their Affiliates may have with such professionals that otherwise might apply to this or any other transaction. Borrowers acknowledge that counsel may provide Agent with a benefit (such as a discount, credit or accommodation for other matters) based on counsel's overall relationship with Agent, including fees paid hereunder. If, for any reason (including inaccurate reporting in any Borrower Materials), it is determined that a higher Applicable Margin should have applied to a period than was actually applied, then the proper margin shall be applied retroactively and Borrowers shall immediately pay to Agent, for the ratable benefit of Lenders, an amount equal to the difference between the amount of interest and fees that would have accrued using the proper margin and the amount actually paid. All amounts payable by Borrowers under this Section shall be due **on demand**.

3.5 Illegality. If any Lender determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender to perform any of its obligations hereunder, to make, maintain, fund, participate in, or charge applicable interest or fees with respect to, any Revolver Loan or Letter of Credit, or to determine or charge interest based on LIBOR, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, the applicable Available Currency in the London interbank market, then, on notice thereof by such Lender to Agent, any obligation of such Lender to perform such obligations, to make, maintain, fund or participate in the Revolver Loan or Letter of Credit (or to charge interest or fees otherwise applicable thereto), or to maintain Revolver Loans bearing interest based on LIBOR, shall be suspended until such Lender notifies Agent that the circumstances giving rise to such determination no longer exist. Upon delivery of such notice, Borrowers shall prepay the applicable Revolver Loan, Cash Collateralize the applicable LC Obligations or, if applicable, convert such Revolver Loan(s) of such Lender to Revolver Loan(s) bearing interest at the U.S. Base Rate or Foreign Base Rate, as applicable. Upon any such prepayment or conversion, applicable Borrowers shall also pay accrued interest on the amount so prepaid or converted.

3.6 Inability to Determine Rates. Agent will promptly notify Borrower Agent and Lenders if, in connection with any Revolver Loan or request for a Revolver Loan, (a) Agent determines that (i) the applicable Available Currency deposits are not being offered to banks in the London interbank Eurodollar market for the applicable Revolver Loan amount, or (ii) adequate and reasonable means do not exist for determining LIBOR; or (b) Agent or Required Lenders determine for any reason that LIBOR does not adequately and fairly reflect the cost to Lenders of funding the Revolver Loan. Thereafter, Lenders' obligations to make or maintain affected Revolver Loans bearing interest based on LIBOR and utilization of the LIBOR component (if affected) in determining U.S. Base Rate or Foreign Base Rate shall be suspended until Agent (upon instruction by Required Lenders) withdraws the notice. Upon receipt of such notice, Borrower Agent may revoke any pending request for a Revolver Loan bearing interest based on LIBOR or, failing that, will be deemed to have requested a Revolver Loan bearing interest at the U.S. Base Rate or Foreign Base Rate, as applicable.

3.7 Increased Costs; Capital Adequacy.

3.7.1 Increased Costs Generally. If any Change in Law shall:

(a) impose, modify or deem applicable any reserve, liquidity, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in calculating LIBOR) or Issuing Bank;

(b) subject any Recipient to Taxes (other than (i) Indemnified Taxes, (ii) Taxes described in clauses (b) through (e) of the definition of Excluded Taxes, and (iii) Connection Income Taxes) with respect to any Revolver Loan, Letter of Credit, Revolver Commitment or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(c) impose on any Lender, Issuing Bank or interbank market any other condition, cost or expense (other than Taxes) affecting any Revolver Loan, Letter of Credit, participation in LC Obligations, Revolver Commitment or Loan Document;

and the result thereof shall be to increase the cost to a Lender of making or maintaining any Revolver Loan or Revolver Commitment, or maintaining any Revolver Loan bearing interest based on LIBOR, or to increase the cost to a Lender or Issuing Bank of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by a Lender or Issuing Bank hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or Issuing Bank, Borrowers will pay to it such additional amount(s), as will compensate it for the additional costs incurred or reduction suffered.

3.7.2 Capital Requirements. If a Lender or Issuing Bank determines that a Change in Law affecting such Lender or Issuing Bank or its holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's, Issuing Bank's or holding company's capital as a consequence of this Agreement, or such Lender's or Issuing Bank's Revolver Commitments, Revolver Loans, Letters of Credit or participations in LC Obligations or Revolver Loans, to a level below that which such Lender, Issuing Bank or holding company could have achieved but for such Change in Law (taking into consideration its policies with respect to capital adequacy), then from time to time Borrowers will pay to such Lender or Issuing Bank, as the case may be, such additional amounts, if such amounts are reasonably similar to the amounts assessed to similar obligors of similar loans or financial accommodations provided by a Lender or the LC Issuer, as will compensate it or its holding company for the reduction suffered.

3.7.3 LIBOR Reserves. If any Lender is required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits, Borrowers shall pay additional interest to such Lender on each Revolver Loan bearing interest based on LIBOR equal to the costs of such reserves allocated to the Revolver Loan by the applicable Lender (as determined by it in good faith, which determination shall be conclusive). The additional interest shall be due and payable on each interest payment date for the Revolver Loan; provided, that if the Lender notifies Borrowers (with a copy to Agent) of the additional interest less than 10 days prior to the interest payment date, then such interest shall be payable 10 days after Borrowers' receipt of the notice.

3.7.4 Compensation. Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of its right to demand such compensation, but Borrowers shall not be required to compensate a Lender or Issuing Bank for any increased costs or reductions suffered more than nine months (plus any period of retroactivity of the Change in Law giving rise to the demand) prior to the date that the Lender or Issuing Bank notifies Borrower Agent of the applicable Change in Law and of such Lender's or Issuing Bank's intention to claim compensation therefor.

3.8 Mitigation. If any Lender or Issuing Bank gives a notice under **Section 3.5** or requests compensation under **Section 3.7**, or if Borrowers are required to pay any Indemnified Taxes or additional amounts with respect to a Lender, Issuing Bank or any Governmental Authority for the account of any Lender or Issuing Bank under **Section 5.9**, then at the request of Borrower Agent, such Lender or Issuing Bank, as applicable, shall use reasonable efforts to file any certificate or document reasonably requested by the Borrower Agent or designate a different Lending Office or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender or Issuing Bank, such designation or assignment (a) would eliminate the need for such notice or reduce amounts payable or to be withheld in the future, as applicable; and (b) would not subject such Lender or Issuing Bank, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to it or unlawful. Borrowers shall pay all reasonable costs and expenses incurred by any Lender or Issuing Bank in connection with any such designation or assignment.

3.9 Funding Losses. If for any reason (a) any Borrowing or maintaining of a Revolver Loan bearing interest based on LIBOR does not occur on the date specified therefor in a Notice of Borrowing (whether or not withdrawn), (b) any repayment or continuation of a Revolver Loan bearing interest based on LIBOR, (c) Borrowers fail to repay a Revolver Loan bearing interest based on LIBOR when required hereunder, or (d) a Lender (other than a Defaulting Lender) is required to assign a Revolver Loan bearing interest based on LIBOR pursuant to **Section 13.4**, then Borrowers shall pay to Agent its customary administrative charge and to each Lender all losses, expenses and fees arising from redeployment of funds or termination of match funding. For purposes of calculating amounts payable under this Section, a Lender shall be deemed to have funded a Revolver Loan bearing interest based on LIBOR by a

matching deposit or other borrowing in the London interbank market for a comparable amount and period, whether or not the Revolver Loan was in fact so funded.

3.10 Maximum Interest. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by Applicable Law (“maximum rate”). If Agent or any Lender shall receive interest in an amount that exceeds the maximum rate, the excess interest shall be applied to the principal of the Obligations or, if it exceeds such unpaid principal, refunded to Borrowers. In determining whether the interest contracted for, charged or received by Agent or a Lender exceeds the maximum rate, such Person may, to the extent permitted by Applicable Law, (a) characterize any payment that is not principal as an expense, fee or premium rather than interest; (b) exclude voluntary prepayments and the effects thereof; and (c) amortize, prorate, allocate and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

SECTION 4. LOAN ADMINISTRATION

4.1 Manner of Borrowing and Funding Revolver Loans.

4.1.1 Notice of Borrowing.

(a) To request Revolver Loans, Borrower Agent shall give Agent a Notice of Borrowing by 11:00 a.m. on the requested funding date. Notices received by Agent after such time shall be deemed received on the next Business Day. Each Notice of Borrowing shall be irrevocable and shall specify (A) the Borrowing amount, (B) the requested funding date (which must be a Business Day), and (C) whether such request is for a Dutch Revolver Loan or U.S. Revolver Loan.

(b) Unless payment is otherwise made by the applicable Borrowers, the becoming due of any Obligation (whether principal, interest, fees or other charges, including Extraordinary Expenses, LC Obligations, Cash Collateral and Secured Bank Product Obligations) shall be deemed to be a request for a Revolver Loan on the due date in the amount due and the Revolver Loan proceeds shall be disbursed as direct payment of such Obligation. In addition, Agent may, at its option, charge such amount against any operating, investment or other account of the applicable Borrower maintained with Agent or any of its Affiliates or branches.

(c) If a Borrower maintains a disbursement account with Agent or any of its Affiliates or branches, then presentation for payment in the account of a Payment Item when there are insufficient funds to cover it shall be deemed to be a request for a Revolver Loan by such Borrower on the presentation date, in the amount of the Payment Item. Proceeds of the Revolver Loan may be disbursed directly to the account.

4.1.2 Fundings by Lenders. Except for Swingline Loans, Agent shall endeavor to notify Lenders of each Notice of Borrowing (or deemed request for a Borrowing) by 2:00 p.m. on the day of a proposed funding of a Revolver Loan. Each Lender shall fund its Pro Rata share of a Borrowing in immediately available funds not later than 3:00 p.m. on the requested funding date, unless Agent’s notice is received after the times provided above, in which case Lender shall fund by 11:00 a.m. on the next Business Day. Subject to its receipt of such amounts from Lenders, Agent shall disburse the Borrowing proceeds in a manner directed by Borrower Agent and acceptable to Agent. Unless Agent receives (in sufficient time to act) written notice from a Lender that it will not fund its share of a Borrowing, Agent may assume that such Lender has deposited or promptly will deposit its share with Agent, and Agent may disburse a corresponding amount to Borrowers. If a Lender’s share of a Borrowing or of a settlement under **Section 4.1.3(b)** is not received by Agent, then the applicable Borrowers agree to repay to Agent **on demand** the amount of such share, together with interest thereon from the date disbursed until repaid, at the rate applicable to the Borrowing. Agent, a Lender or Issuing Bank may fulfill its obligations under Loan Documents through one or more Lending Offices, and this shall not affect any obligation of Obligors under the Loan Documents or with respect to any Obligations.

4.1.3 Swingline Loans; Settlement.

(a) To fulfill any request for a Dutch Revolver Loan hereunder, Agent may in its discretion advance Dutch Swingline Loans to Dutch Borrowers, up to an aggregate outstanding amount equal to 15% of the Dutch Revolver Commitments. Dutch Swingline Loans shall constitute Dutch Revolver Loans for all purposes, except that payments thereon shall be made to Agent for its own account until settled with or funded by Dutch Lenders hereunder.

(b) To fulfill any request for a U.S. Revolver Loan hereunder, Agent may in its discretion advance U.S. Swingline Loans to U.S. Borrowers, up to an aggregate outstanding amount equal to 15% of the U.S. Revolver Commitments. U.S. Swingline Loans shall constitute U.S. Revolver Loans for all purposes, except that payments thereon shall be made to Agent for its own account until settled with or funded by U.S. Lenders hereunder.

(c) Settlement of Dutch Revolver Loans, including Dutch Swingline Loans, among Dutch Lenders and Agent and settlement of U.S. Revolver Loans, including U.S. Swingline Loans, among U.S. Lenders and Agent, shall, in each case, take place on a date determined from time to time by Agent (but at least weekly, unless the settlement amount is de minimis), on a Pro Rata basis in accordance with the Settlement Report delivered by Agent to Lenders. Between settlement dates, Agent may in its discretion apply payments on applicable Revolver Loans to applicable Swingline Loans, regardless of any designation by Borrowers or anything herein to the contrary. Each Dutch Lender hereby purchases, without recourse or warranty, an undivided Pro Rata participation in all Dutch Swingline Loans outstanding from time to time until settled and each U.S. Lender hereby purchases, without recourse or warranty, an undivided Pro Rata participation in all U.S. Swingline Loans outstanding from time to time until settled. If a Swingline Loan cannot be settled among Lenders, whether due to an Obligor's Insolvency Proceeding or for any other reason, each Lender shall pay the amount of its participation in the Revolver Loan to Agent, in immediately available funds, within one Business Day after Agent's request therefor. Lenders' obligations to make settlements and to fund participations are absolute, irrevocable and unconditional, without offset, counterclaim or other defense, and whether or not the Revolver Commitments have terminated, a Dutch Overadvance, a U.S. Overadvance or an Overadvance exists or the conditions in **Section 6** are satisfied.

4.1.4 **Notices.** If Borrowers request Revolver Loans, select interest rates or transfer funds based on telephonic or electronic instructions to Agent, Borrowers shall confirm the request by prompt delivery to Agent of a Notice of Borrowing. Agent and Lenders are not liable for any loss suffered by a Borrower as a result of Agent acting on its understanding of telephonic or electronic instructions from a person believed in good faith to be authorized to give instructions on a Borrower's behalf.

4.2 Defaulting Lender. Notwithstanding anything herein to the contrary:

4.2.1 **Reallocation of Pro Rata Share; Amendments.** For purposes of determining Lenders' obligations or rights to fund, participate in or receive collections with respect to Revolver Loans and Letters of Credit (including existing Swingline Loans, Protective Advances and LC Obligations), Agent may in its discretion reallocate Pro Rata shares by excluding a Defaulting Lender's Revolver Commitments and Revolver Loans from the calculation of shares; provided that in no event shall such reallocation among non-Defaulting Lenders result in any Lender exceeding its respective Revolver Commitment. A Defaulting Lender shall have no right to vote on any amendment, waiver or other modification of a Loan Document, except as provided in **Section 14.1.1(c)**.

4.2.2 **Payments; Fees.** Agent may, in its discretion, receive and retain any amounts payable to a Defaulting Lender under the Loan Documents, and a Defaulting Lender shall be deemed to have assigned to Agent such amounts until all Obligations owing to Agent, non-Defaulting Lenders and other Secured Parties have been paid in full. Agent may use such amounts to cover the Defaulting Lender's defaulted obligations, to Cash Collateralize such Lender's Fronting Exposure, to readvance the amounts to Borrowers or to repay Obligations. A Lender shall not be entitled to receive any fees accruing hereunder while it is a Defaulting Lender and its unfunded Revolver Commitment shall be disregarded for purposes of calculating the unused line fee under **Section 3.2.1**. If any LC Obligations owing to a Defaulted Lender are reallocated to other Lenders, fees attributable to such LC Obligations under **Section 3.2.2** shall be paid to such Lenders. Agent shall be paid all fees attributable to LC Obligations that are not reallocated.

4.2.3 **Status; Cure.** Agent may determine in its discretion that a Lender constitutes a Defaulting Lender and the effective date of such status shall be conclusive and binding on all parties, absent manifest error. Borrowers, Agent and Issuing Bank may agree in writing that a Lender has ceased to be a Defaulting Lender, whereupon Pro Rata shares shall be reallocated without exclusion of the reinstated Lender's Revolver Commitments and Revolver Loans, and the Global Revolver Usage and other exposures under the Revolver Commitments shall be reallocated among Lenders and settled by Agent (with appropriate payments by the reinstated Lender, including its payment of breakage costs for reallocated Revolver Loans bearing interest based on LIBOR) in accordance with the readjusted Pro Rata shares. Unless expressly agreed by Borrowers, Agent and Issuing Bank, or as expressly provided herein with respect to Bail-In Actions and related matters, no reallocation of Revolver Commitments and Revolver Loans to non-Defaulting Lenders or reinstatement of a Defaulting Lender shall constitute a waiver or release of claims against such Lender. The failure of any Lender to fund a Revolver Loan, to make a payment in respect of LC Obligations or otherwise to perform obligations hereunder shall not relieve any other Lender of its obligations under any Loan Document. No Lender shall be responsible for default by another Lender.

4.3 Reserved.

4.4 Borrower Agent. Each Borrower hereby designates SMCI ("Borrower Agent") as its representative and agent for all purposes under the Loan Documents, including requests for and receipt of Revolver Loans and Letters of Credit, designation of

interest rates, delivery or receipt of communications, delivery of Borrower Materials, payment of Obligations, requests for waivers, amendments or other accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with Agent, Issuing Bank or any Lender. Borrower Agent hereby accepts such appointment. Agent and Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, any notice or communication (including any notice of borrowing) delivered by Borrower Agent on behalf of any Borrower. Agent and Lenders may give any notice or communication with a Borrower hereunder to Borrower Agent on behalf of such Borrower. Each of Agent, Issuing Bank and Lenders shall have the right, in its discretion, to deal exclusively with Borrower Agent for all purposes under the Loan Documents. Each Borrower agrees that any notice, election, communication, delivery, representation, agreement, action, omission or undertaking by Borrower Agent shall be binding upon and enforceable against such Borrower.

4.5 One Obligation.

4.5.1 Dutch Obligations. The Dutch Revolver Loans, Dutch LC Obligations and other Dutch Obligations constitute one general obligation of Dutch Borrowers and are secured by Agent's Lien on all Dutch Collateral; provided, that Agent and each Lender shall be deemed to be a creditor of, and the holder of a separate claim against, each Dutch Borrower to the extent of any Dutch Obligations jointly or severally owed by such Dutch Borrower.

4.5.2 U.S. Obligations. The U.S. Revolver Loans, U.S. LC Obligations and other U.S. Obligations constitute one general obligation of U.S. Borrowers and are secured by Agent's Lien on all U.S. Collateral; provided, that Agent and each Lender shall be deemed to be a creditor of, and the holder of a separate claim against, each U.S. Borrower to the extent of any U.S. Obligations jointly or severally owed by such U.S. Borrower.

4.6 Effect of Termination. On the effective date of the termination of all Revolver Commitments, the Obligations shall be immediately due and payable, and each Secured Bank Product Provider may terminate its Bank Products. Until Full Payment of the Obligations, all undertakings of Borrowers contained in the Loan Documents shall continue, and Agent shall retain its Liens in the Collateral and all of its rights and remedies under the Loan Documents. Agent shall not be required to terminate its Liens unless it receives Cash Collateral or a written agreement, in each case satisfactory to it, protecting Agent and Lenders from dishonor or return of any Payment Item previously applied to the Obligations. **Sections 2.3, 3.4, 3.6, 3.7, 3.9, 5.5, 5.9, 5.10, 12, 14.2**, this Section, and each indemnity or waiver given by an Obligor or Lender in any Loan Document, shall survive Full Payment of the Obligations.

SECTION 5. PAYMENTS

5.1 General Payment Provisions. All payments of U.S. Obligations shall be made in Dollars and all payments of Dutch Obligations shall be made in Alternative Currency as set forth in **Section 5.12.1**, in each case, without offset, counterclaim or defense of any kind, free and clear of (and without deduction for) any Taxes, and in immediately available funds, not later than 12:00 noon on the due date. Any payment after such time shall be deemed made on the next Business Day. Any payment of a Revolver Loan bearing interest based on LIBOR shall be accompanied by all amounts which may be due under **Section 3.9**. Borrowers agree that Agent shall have the continuing, exclusive right to apply and reapply payments and proceeds of Collateral against the Obligations secured by such Collateral, in such manner as Agent deems advisable.

5.2 Repayment of Revolver Loans. Revolver Loans shall be due and payable in full on the Revolver Termination Date, unless payment is sooner required hereunder. Revolver Loans may be prepaid from time to time, without penalty or premium. Subject to **Section 2.1.5**, (i) if an Overadvance exists at any time, Borrowers shall, on the sooner of Agent's demand or the first Business Day after any Borrower has knowledge thereof, repay Revolver Loans in an amount sufficient to reduce Global Revolver Usage to the Global Borrowing Base, (ii) if a Dutch Overadvance exists at any time, Dutch Borrowers shall, on the sooner of Agent's demand or the first Business Day after any Dutch Borrower has knowledge thereof, repay Dutch Revolver Loans in an amount sufficient to reduce Dutch Revolver Usage to the Dutch Borrowing Base and (iii) if a U.S. Overadvance exists at any time, U.S. Borrowers shall, on the sooner of Agent's demand or the first Business Day after any U.S. Borrower has knowledge thereof, repay U.S. Revolver Loans in an amount sufficient to reduce U.S. Revolver Usage to the U.S. Borrowing Base. If any Asset Disposition includes the disposition of Accounts or Inventory, the applicable Borrowers shall apply Net Proceeds to repay their Revolver Loans equal to the greater of (a) the net book value of such Accounts and Inventory, or (b) the reduction in the applicable Dutch Borrowing Base or U.S. Borrowing Base resulting from the disposition.

5.3 Reserved.

5.4 Payment of Other Obligations. Obligations other than Revolver Loans, including LC Obligations and Extraordinary Expenses, shall be paid by Borrowers as provided in the Loan Documents or, if no payment date is specified, **on demand**.

5.5 Marshaling; Payments Set Aside. None of Agent or Lenders shall be under any obligation to marshal any assets in favor of any Obligor or against any Obligations. If any payment by or on behalf of Borrowers is made to Agent, Issuing Bank or any Lender, or if Agent, Issuing Bank or any Lender exercises a right of setoff, and any of such payment or setoff is subsequently

invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Agent, Issuing Bank or a Lender in its discretion) to be repaid to a trustee, receiver or any other Person, then the Obligation originally intended to be satisfied, and all Liens, rights and remedies relating thereto, shall be revived and continued in full force and effect as if such payment or setoff had not occurred.

5.6 Application and Allocation of Payments.

5.6.1 Application.

(a) Payments made by Dutch Borrowers hereunder shall be applied (i) first, as specifically required hereby; (ii) second, to Dutch Obligations then due and owing; (iii) third, to other Dutch Obligations specified by Dutch Borrowers; and (iv) fourth, as determined by Agent in its discretion.

(b) Payments made by U.S. Borrowers hereunder shall be applied (i) first, as specifically required hereby; (ii) second, to U.S. Obligations then due and owing; (iii) third, to other Obligations specified by Borrowers; and (iv) fourth, as determined by Agent in its discretion.

5.6.2 U.S. Post-Default Allocation. Notwithstanding anything in any Loan Document to the contrary, during an Event of Default under **Section 11.1(j)**, or during any other Event of Default at the discretion of Agent or Required Lenders, monies to be applied to the U.S. Obligations, whether arising from payments by U.S. Obligors, realization on U.S. Collateral, setoff or otherwise, shall be allocated as follows:

(a) **FIRST**, to all fees, indemnification, costs and expenses, including Extraordinary Expenses, owing to Agent by U.S. Obligors;

(b) **SECOND**, to all other amounts owing to Agent, including U.S. Swingline Loans, U.S. Protective Advances, and U.S. Revolver Loans and participations that a Defaulting Lender has failed to settle or fund;

(c) **THIRD**, to all amounts owing to Issuing Bank by a U.S. Obligor;

(d) **FOURTH**, to all U.S. Obligations (other than U.S. Secured Bank Product Obligations) constituting fees, indemnification, costs or expenses owing to Lenders;

(e) **FIFTH**, to all U.S. Obligations (other than U.S. Secured Bank Product Obligations) constituting interest;

(f) **SIXTH**, to Cash Collateralize all U.S. LC Obligations;

(g) **SEVENTH**, to all U.S. Revolver Loans, and to U.S. Secured Bank Product Obligations arising under Hedge Agreements (including Cash Collateralization thereof) which are provided by Bank of America (or any of its Lending Offices) or any of its Affiliates or any other U.S. Lender or Affiliate of a U.S. Lender, up to the amount of Reserves existing therefor;

(h) **EIGHTH**, to all other U.S. Secured Bank Product Obligations which are provided by Bank of America (or any of its Lending Offices) or any of its Affiliates or any other U.S. Lender or Affiliate of a U.S. Lender;

(i) **NINTH**, to all other U.S. Secured Bank Product Obligations which are provided by a counterparty other than Bank of America (and any of its Lending Offices) or any of its Affiliates or any other U.S. Lender or Affiliate of a U.S. Lender; and

(j) **LAST**, to all remaining U.S. Obligations (including each U.S. Obligor's obligations under its guaranty of the Dutch Obligations).

5.6.3 Dutch Post-Default Allocation. Notwithstanding anything in any Loan Document to the contrary, during an Event of Default under **Section 11.1(j)**, or during any other Event of Default at the discretion of Agent or Required Lenders, monies to be applied to the Dutch Obligations, whether arising from payments by Dutch Obligors, realization on Dutch Collateral, setoff or otherwise, shall be allocated as follows:

(a) **FIRST**, to all fees, indemnification, costs and expenses, including Extraordinary Expenses, owing to Agent by a Dutch Obligor;

(b) **SECOND**, to all other amounts owing to Agent, including Dutch Swingline Loans, Dutch Protective Advances, and Dutch Revolver Loans and participations that a Defaulting Lender has failed to settle or fund;

(c) **THIRD**, to all amounts owing to Issuing Bank by Dutch Obligors;

- (d) **FOURTH**, to all Dutch Obligations (other than Dutch Secured Bank Product Obligations) constituting fees, indemnification, costs or expenses owing to Lenders;
- (e) **FIFTH**, to all Dutch Obligations (other than Dutch Secured Bank Product Obligations) constituting interest;
- (f) **SIXTH**, to Cash Collateralize all Dutch LC Obligations;
- (g) **SEVENTH**, to all Dutch Revolver Loans, and to Dutch Secured Bank Product Obligations arising under Hedge Agreements (including Cash Collateralization thereof) which are provided by Bank of America (and any of its Lending Offices) or any of its Affiliates or any other Dutch Lender or Affiliate of a Dutch Lender, up to the amount of Reserves existing therefor;
- (h) **EIGHTH**, to all other Dutch Secured Bank Product Obligations which are provided by Bank of America (or any of its Lending Offices) or any of its Affiliates or any other Dutch Lender or Affiliate of a Dutch Lender;
- (i) **NINTH**, to all other Dutch Secured Bank Product Obligations which are provided by a counterparty other than Bank of America (and any of its Lending Offices) or any of its Affiliates or any other Dutch Lender or Affiliate of a Dutch Lender; and
- (j) **LAST**, to all remaining Dutch Obligations.

With respect to the application of payments under **Section 5.6.2** and **5.6.3**, amounts shall be applied to payment of each category of Obligations only after Full Payment of amounts payable from time to time under all preceding categories. If amounts are insufficient to satisfy a category, they shall be paid ratably among outstanding Obligations in the category. Monies and proceeds obtained from an Obligor shall not be applied to its Excluded Swap Obligations, but appropriate adjustments shall be made with respect to amounts obtained from other Obligors to preserve the allocations in each category. Agent shall have no obligation to calculate the amount of any Secured Bank Product Obligation and may request a reasonably detailed calculation thereof from a Secured Bank Product Provider. If the provider fails to deliver the calculation within five days following request, Agent may assume the amount is zero. The allocations in this Section are solely to determine the priorities among Secured Parties and may be changed by agreement of affected Secured Parties without the consent of any Obligor. This Section is not for the benefit of or enforceable by any Obligor, and no Obligor has any right to direct the application of payments or Collateral proceeds subject to this Section.

5.6.4 **Erroneous Application**. Agent shall not be liable for any application of amounts made by it in good faith and, if any such application is subsequently determined to have been made in error, the sole recourse of any Lender or other Person to which such amount should have been paid shall be to recover the amount from the Person that actually received it (and, if such amount was received by a Secured Party, the Secured Party agrees to return it).

5.7 Dominion Account. Prior to the Conversion Date, the ledger balance in the main Dominion Account of each Borrower as of the end of a Business Day shall be applied to the applicable Obligations at the beginning of the next Business Day. Upon and after the Conversion Date, the ledger balance in the main Dominion Account of each Borrower as of the end of a Business Day shall be applied to the applicable Obligations at the beginning of the next Business Day, during any Trigger Period. Any resulting credit balance shall not accrue interest in favor of Borrowers and shall be made available to the applicable Borrowers as long as no Default or Event of Default exists.

5.8 Account Stated. Agent shall maintain, in accordance with its customary practices, loan account(s) evidencing the Debt of Borrowers hereunder. Any failure of Agent to record anything in a loan account, or any error in doing so, shall not limit or otherwise affect the obligation of Borrowers to pay any amount owing hereunder. Entries made in a loan account shall constitute presumptive evidence of the information contained therein. If any information contained in a loan account is provided to or inspected by any Person, the information shall be conclusive and binding on such Person for all purposes absent manifest error, except to the extent such Person notifies Agent in writing within 30 days after receipt or inspection that specific information is subject to dispute.

5.9 Taxes

5.9.1 **Defined Terms**. For purposes of this Section and **Section 5.10**, the term “Lender” includes any Issuing Bank and the term “Applicable Law” includes FATCA.

5.9.2 **Payments Free of Taxes; Obligation to Withhold; Tax Payment**

(a) Any and all payments of Obligations by Obligors under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If Applicable Law (as determined by Obligors and Agent in their discretion) requires the deduction or withholding of any Tax from any such payment by

Agent or an Obligor, then Agent or such Obligor shall be entitled to make such deduction or withholding based on information and documentation provided pursuant to **Section 5.10**.

(b) If Agent or any Obligor is required by the Code to withhold or deduct Taxes, including backup withholding and withholding taxes, from any payment, then (i) Agent shall pay the full amount that it determines is to be withheld or deducted to the relevant Governmental Authority pursuant to the Code, and (ii) to the extent the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Obligor shall be increased as necessary so that the Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(c) If Agent or any Obligor is required by any Applicable Law other than the Code to withhold or deduct Taxes from any payment, then (i) Agent or such Obligor, to the extent required by Applicable Law, shall timely pay the full amount to be withheld or deducted to the relevant Governmental Authority, and (ii) to the extent the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Obligor shall be increased as necessary so that the Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

5.9.3 Payment of Other Taxes. Without limiting the foregoing, Borrowers shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at Agent's option, timely reimburse Agent for payment of, any Other Taxes.

5.9.4 Tax Indemnification.

(a) Each Borrower shall indemnify and hold harmless, on a joint and several basis, each Recipient against any Indemnified Taxes (including those imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each Borrower shall indemnify and hold harmless Agent against any amount that a Lender or Issuing Bank fails for any reason to pay indefeasibly to Agent as required pursuant to this Section. Each Borrower shall make payment within 10 days after demand for any amount or liability payable under this Section. A certificate as to the amount of such payment or liability delivered to Borrowers by a Lender or Issuing Bank (with a copy to Agent), or by Agent on its own behalf or on behalf of any Recipient, shall be conclusive absent manifest error; provided, that no Borrower shall be required to indemnify the Agent for any amount attributable to the Agent's gross negligence or willful misconduct that is determined in a final, non-appealable judgment by a court of competent jurisdiction to result from the gross negligence or willful misconduct. Upon receipt of such indemnity payment and upon the request of a Borrower, the Agent hereby agrees to assign to the requesting Borrower any rights for compensation against such Lender or issuer of a Letter of Credit (other than the right of set off pursuant to the last sentence of **Section 5.9.4(b)** below) to the extent the Agent has been indemnified by a Borrower.

(b) Each Lender and Issuing Bank shall indemnify and hold harmless, on a several basis, (i) Agent against any Indemnified Taxes attributable to such Lender or Issuing Bank (but only to the extent Borrowers have not already paid or reimbursed Agent therefor and without limiting Borrowers' obligation to do so), (ii) Agent and Obligors, as applicable, against any Taxes attributable to such Lender's failure to maintain a Participant register as required hereunder, and (iii) Agent and Obligors, as applicable, against any Excluded Taxes attributable to such Lender or Issuing Bank, in each case, that are payable or paid by Agent or an Obligor in connection with any Obligations, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each Lender and Issuing Bank shall make payment within 10 days after demand for any amount or liability payable under this Section. A certificate as to the amount of such payment or liability delivered to any Lender or Issuing Bank by Agent shall be conclusive absent manifest error.

5.9.5 Evidence of Payments. As soon as practicable after payment by an Obligor of any Taxes pursuant to this Section, Borrower Agent shall deliver to Agent the original or a certified copy of a receipt issued by the appropriate Governmental Authority evidencing the payment, a copy of any return required by Applicable Law to report the payment or other evidence of payment reasonably satisfactory to Agent.

5.9.6 Treatment of Certain Refunds. Unless required by Applicable Law, at no time shall Agent have any obligation to file for or otherwise pursue on behalf of a Lender or Issuing Bank, nor have any obligation to pay to any Lender or Issuing Bank, any refund of Taxes withheld or deducted from funds paid for the account of a Lender or Issuing Bank. If a Recipient determines in its discretion exercised in good faith that it has received a refund of any Taxes (including any Tax credit in lieu of a refund) that were indemnified by Borrowers or with respect to which a Borrower paid additional amounts pursuant to this

Section, it shall pay the amount equal to such refund to Borrowers (but only to the extent of indemnity payments or additional amounts actually paid by Borrowers with respect to the Taxes giving rise to the refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient and without interest (other than interest paid by the relevant Governmental Authority with respect to such refund). Borrowers shall, upon request by the Recipient, repay to the Recipient such amount paid over to Borrowers (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) if the Recipient is required to repay such refund to the Governmental Authority. Notwithstanding anything herein to the contrary, no Recipient shall be required to pay any amount to Borrowers if such payment would place it in a less favorable net after-Tax position than it would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. In no event shall Agent or any Recipient be required to make its Tax returns (or any other information relating to its Taxes that it deems confidential) available to any Obligor or other Person.

5.9.7 Survival. Each party's obligations under **Sections 5.9** and **5.10** shall survive the resignation or replacement of Agent or any assignment of rights by or replacement of a Lender or Issuing Bank, the termination of the Revolver Commitments, and the repayment, satisfaction, discharge or Full Payment of any Obligations.

5.10 Lender Tax Information.

5.10.1 Status of Lenders. Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments of Obligations shall deliver to Borrowers and Agent, at the time or times reasonably requested by Borrower or Agent, properly completed and executed documentation reasonably requested by Borrowers or Agent as will permit such payments to be made without or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrowers or Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by Borrowers or Agent to enable them to determine whether such Lender is subject to backup withholding or information reporting requirements. Notwithstanding the foregoing, the completion, execution and submission of such documentation (other than documentation described in **Sections 5.10.2(a), (b)** and **(d)**) shall not be required if a Lender reasonably believes delivery of the documentation would subject it to any material unreimbursed cost or expense or would materially prejudice its legal or commercial position.

5.10.2 Documentation. Without limiting the foregoing, if any Borrower is a U.S. Person,

(a) Any Lender that is a U.S. Person shall deliver to Borrowers and Agent on or prior to the date on which such Lender becomes a Lender hereunder (and from time to time thereafter upon reasonable request of Borrowers or Agent), executed copies of IRS Form W-9, certifying that such Lender is exempt from U.S. federal backup withholding Tax;

(b) Any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrowers and Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender hereunder (and from time to time thereafter upon reasonable request of Borrowers or Agent), whichever of the following is applicable:

(i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party, (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from or reduction of U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty, and (y) with respect to other payments under the Loan Documents, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from or reduction of U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(ii) executed copies of IRS Form W-8ECI;

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate in form satisfactory to Agent to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of a Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code ("U.S. Tax Compliance Certificate"), and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E; or

(iv) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate in form satisfactory to Agent, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided, that if the Foreign Lender is a partnership and one or more of its direct or indirect partners is claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate on behalf of each such direct and indirect partner;

(c) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrowers and Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender hereunder (and from time to time thereafter upon reasonable request of Borrowers or Agent), executed copies of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit Borrowers or Agent to determine the withholding or deduction required to be made; and

(d) if payment of an Obligation to a Lender would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code), such Lender shall deliver to Borrowers and Agent, at the time(s) prescribed by law and otherwise upon reasonable request of Borrowers or Agent, such documentation prescribed by Applicable Law (including Section 1471(b)(3)(C)(i) of the Code) and such additional documentation as may be appropriate for Borrowers or Agent to comply with their obligations under FATCA and to determine that such Lender has complied with its obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (d), "FATCA" shall include any amendments made to FATCA after the date hereof.

5.10.3 Redelivery of Documentation. If any form or certification previously delivered by a Lender pursuant to this Section expires or becomes obsolete or inaccurate in any respect, such Lender shall promptly update the form or certification or notify Borrowers and Agent in writing of its legal inability to do so.

5.11 Nature and Extent of Each Borrower's Liability.

5.11.1 Joint and Several Liability.

(a) Each U.S. Borrower agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to Agent and U.S. Lenders the prompt payment and performance of, all U.S. Obligations, except its Excluded Swap Obligations. Each U.S. Borrower agrees that its guaranty obligations hereunder constitute a continuing guaranty of payment and not of collection, that such obligations shall not be discharged until Full Payment of the U.S. Obligations, and that such obligations are absolute and unconditional, irrespective of (a) the genuineness, validity, regularity, enforceability, subordination or any future modification of, or change in, any U.S. Obligations or Loan Document, or any other document, instrument or agreement to which any U.S. Obligor is or may become a party or be bound; (b) the absence of any action to enforce this Agreement (including this Section) or any other Loan Document, or any waiver, consent or indulgence of any kind by Agent or any U.S. Lender with respect thereto; (c) the existence, value or condition of, or failure to perfect a Lien or to preserve rights against, any security or guaranty for any U.S. Obligations or any action, or the absence of any action, by Agent or any U.S. Lender in respect thereof (including the release of any security or guaranty); (d) the insolvency of any U.S. Obligor; (e) any election by Agent or any U.S. Lender in an Insolvency Proceeding for the application of Section 1111(b)(2) of the Bankruptcy Code; (f) any borrowing or grant of a Lien by any other U.S. Borrower, as debtor-in-possession under Section 364 of the Bankruptcy Code or otherwise; (g) the disallowance of any claims of Agent or any U.S. Lender against any U.S. Obligor for the repayment of any U.S. Obligations under Section 502 of the Bankruptcy Code or otherwise; or (h) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except Full Payment of the U.S. Obligations.

(b) Joint and Several Liability. Each Dutch Borrower agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to Agent and Dutch Lenders the prompt payment and performance of, all Dutch Obligations, except its Excluded Swap Obligations. Each Dutch Borrower agrees that its guaranty obligations hereunder constitute a continuing guaranty of payment and not of collection, that such obligations shall not be discharged until Full Payment of the Dutch Obligations, and that such obligations are absolute and unconditional, irrespective of (a) the genuineness, validity, regularity, enforceability, subordination or any future modification of, or change in, any Dutch Obligations or Loan Document, or any other document, instrument or agreement to which any Dutch Obligor is or may become a party or be bound; (b) the absence of any action to enforce this Agreement (including this Section) or any other Loan Document, or any waiver, consent or indulgence of any kind by Agent or any Dutch Lender with respect thereto; (c) the existence, value or condition of, or failure to perfect a Lien or to preserve rights against, any security or guaranty for any Dutch Obligations or any action, or the absence of any action, by Agent or any Dutch Lender in respect thereof (including the release of any security or guaranty); (d) the insolvency of any Dutch Obligor; (e) any election by Agent or any Dutch Lender in an Insolvency Proceeding for the application of Section 1111(b)(2) of the Bankruptcy Code; (f) any borrowing or grant of a Lien by any other Dutch Borrower, as

debtor-in-possession under Section 364 of the Bankruptcy Code or otherwise; (g) the disallowance of any claims of Agent or any Dutch Lender against any Dutch Obligor for the repayment of any Dutch Obligations under Section 502 of the Bankruptcy Code or otherwise; or (h) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except Full Payment of the Dutch Obligations.

5.11.2 Waivers.

(a) Each Borrower expressly waives all rights that it may have now or in the future under any statute, at common law, in equity or otherwise, to compel Agent or Lenders to marshal assets or to proceed against any Obligor, other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Borrower. Each Borrower waives all defenses available to a surety, guarantor or accommodation co-obligor other than Full Payment of Obligations and waives, to the maximum extent permitted by law, any right to revoke any guaranty of Obligations as long as it is a Borrower. It is agreed among each Borrower, Agent and Lenders that the provisions of this **Section 5.11** are of the essence of the transaction contemplated by the Loan Documents and that, but for such provisions, Agent and Lenders would decline to make Revolver Loans and issue Letters of Credit. Each Borrower acknowledges that its guaranty pursuant to this Section is necessary to the conduct and promotion of its business, and can be expected to benefit such business.

(b) Agent and Lenders may, in their discretion, pursue such rights and remedies as they deem appropriate, including realization upon Collateral or any Real Estate by judicial foreclosure or nonjudicial sale or enforcement, without affecting any rights and remedies under this **Section 5.11**. If, in taking any action in connection with the exercise of any rights or remedies, Agent or any Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any Borrower or other Person, whether because of any Applicable Laws pertaining to “election of remedies” or otherwise, each Borrower consents to such action and waives any claim based upon it, even if the action may result in loss of any rights of subrogation that any Borrower might otherwise have had. Any election of remedies that results in denial or impairment of the right of Agent or any Lender to seek a deficiency judgment against any Borrower shall not impair any other Borrower’s obligation to pay the full amount of the Obligations. Each Borrower waives all rights and defenses arising out of an election of remedies, such as nonjudicial foreclosure with respect to any security for Obligations, even though that election of remedies destroys such Borrower’s rights of subrogation against any other Person. Agent may bid Obligations, in whole or part, at any foreclosure, trustee or other sale, including any private sale, and the amount of such bid need not be paid by Agent but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether Agent or any other Person is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral, and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this **Section 5.11**, notwithstanding that any present or future law or court decision may have the effect of reducing the amount of any deficiency claim to which Agent or any Lender might otherwise be entitled but for such bidding at any such sale.

5.11.3 Extent of Liability; Contribution.

(a) Notwithstanding anything herein to the contrary, each Borrower’s liability under this **Section 5.11** shall not exceed the greater of (i) all amounts for which such Borrower is primarily liable, as described in clause (c) below, and (ii) such Borrower’s Allocable Amount.

(b) If any Borrower makes a payment under this **Section 5.11** of any Obligations (other than amounts for which such Borrower is primarily liable) (a “Guarantor Payment”) that, taking into account all other Guarantor Payments previously or concurrently made by any other Borrower, exceeds the amount that such Borrower would otherwise have paid if each Borrower had paid the aggregate Obligations satisfied by such Guarantor Payments in the same proportion that such Borrower’s Allocable Amount bore to the total Allocable Amounts of all Borrowers, then such Borrower shall be entitled to receive contribution and indemnification payments from, and to be reimbursed by, each other Borrower for the amount of such excess, ratably based on their respective Allocable Amounts in effect immediately prior to such Guarantor Payment. The “Allocable Amount” for any Borrower shall be the maximum amount that could then be recovered from such Borrower under this **Section 5.11** without rendering such payment voidable under Section 548 of the Bankruptcy Code or under any applicable state fraudulent transfer or conveyance act, or similar statute or common law.

(c) **Section 5.11.3(a)** shall not limit the liability of any Borrower to pay or guarantee Revolver Loans made directly or indirectly to it (including Revolver Loans advanced hereunder to any other Person and then re-loaned or otherwise transferred to, or for the benefit of, such Borrower), LC Obligations relating to Letters of Credit issued to

support its business, Secured Bank Product Obligations incurred to support its business, and all accrued interest, fees, expenses and other related Obligations with respect thereto, for which such Borrower shall be primarily liable for all purposes hereunder. Agent and Lenders shall have the right, at any time in their discretion, to condition Revolver Loans and Letters of Credit upon a separate calculation of borrowing availability for each Borrower and to restrict the disbursement and use of Revolver Loans and Letters of Credit to a Borrower based on that calculation.

(d) Each Obligor that is a Qualified ECP when its guaranty of or grant of Lien as security for a Swap Obligation becomes effective hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide funds or other support to each Specified Obligor with respect to such Swap Obligation as may be needed by such Specified Obligor from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP's obligations and undertakings under this **Section 5.11** voidable under any applicable fraudulent transfer or conveyance act). The obligations and undertakings of each Qualified ECP under this Section shall remain in full force and effect until Full Payment of all Obligations. Each Obligor intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support or other agreement" for the benefit of, each Obligor for all purposes of the Commodity Exchange Act.

5.11.4 Joint Enterprise. Each Borrower has requested that Agent and Lenders make this credit facility available to Borrowers on a combined basis, in order to finance Borrowers' business most efficiently and economically. Borrowers' business is a mutual and collective enterprise, and the successful operation of each Borrower is dependent upon the successful performance of the integrated group. Borrowers believe that consolidation of their credit facility will enhance the borrowing power of each Borrower and ease administration of the facility, all to their mutual advantage. Borrowers acknowledge that Agent's and Lenders' willingness to extend credit and to administer the Collateral on a combined basis hereunder is done solely as an accommodation to Borrowers and at Borrowers' request.

5.11.5 Subordination. Each Borrower hereby subordinates any claims, including any rights at law or in equity to payment, subrogation, reimbursement, exoneration, contribution, indemnification or set off, that it may have at any time against any other Obligor, howsoever arising, to the Full Payment of its Obligations.

5.12 Currency Matters. Dollars are the currency of account and payment for each and every sum at any time due from the Borrowers hereunder; provided that:

5.12.1 except as expressly provided in this Agreement, each repayment of a Revolver Loan or a part thereof shall be made in the currency in which such Revolver Loan is denominated at the time of that repayment;

5.12.2 cash payment of interest shall be made in the currency in which such principal or other sum in respect of which such interest is payable, is denominated;

5.12.3 each payment of any Letter of Credit Fees (and any other fees payable by the Borrowers under **Section 3.2**) and all other amounts due hereunder (unless the provisions of the Loan Agreement require otherwise) shall be in Dollars (if the Letter of Credit is denominated in Dollars) or Alternative Currency (if the Letter of Credit is denominated in Alternative Currency), as applicable;

5.12.4 each payment in respect of costs, expenses and indemnities shall be made in the currency in which the same were incurred; and

5.12.5 any amount expressed to be payable in Euro or Sterling shall be paid in Euro or Sterling, as applicable.

No payment to Agent or any Lender (whether under any judgment or court order or otherwise) shall discharge the obligation or liability in respect of which it was made unless and until Agent or such Lender shall have received payment in full in the currency in which such obligation or liability was incurred, and to the extent that the amount of any such payment shall, on actual conversion into such currency, fall short of such obligation or liability actual or contingent expressed in that currency, each borrower, severally and not jointly, agrees to indemnify and hold harmless Agent or such Lender, as the case may be, with respect to the amount of the shortfall with respect to amounts payable by such Borrower hereunder, with such indemnity surviving the termination of this agreement and any legal proceeding, judgment or court order pursuant to which the original payment was made which resulted in the shortfall.

SECTION 6. CONDITIONS PRECEDENT

6.1 Conditions Precedent to Initial U.S. Revolver Loans. In addition to the conditions set forth in **Section 6.3**, U.S. Lenders shall not be required to fund any requested U.S. Revolver Loan, issue any U.S. Letter of Credit, or otherwise extend credit to U.S. Borrowers hereunder, until the date ("U.S. Closing Date") that each of the following conditions has been satisfied or waived by

Lenders:

(a) Each Loan Document shall have been duly executed and delivered to Agent by each of the signatories thereto, and each U.S. Obligor shall be in compliance with all terms thereof.

(b) Agent shall have received acknowledgments of all filings or recordations necessary to perfect its Liens in the U.S. Collateral, as well as UCC and Lien searches and other evidence satisfactory to Agent that such Liens are the only Liens upon the U.S. Collateral, except Permitted Liens.

(c) Agent shall have received duly executed agreements establishing each Dominion Account of U.S. Borrowers and related lockbox, in form and substance, and with financial institutions, satisfactory to Agent.

(d) Agent shall have received certificates, in form and substance satisfactory to it, from a knowledgeable Senior Officer of each U.S. Borrower certifying that, after giving effect to the initial U.S. Revolver Loans and transactions hereunder, (i) such U.S. Borrower is Solvent; (ii) no Default or Event of Default exists; (iii) the representations and warranties set forth in **Section 9** are true and correct; and (iv) such U.S. Borrower has complied with all agreements and conditions to be satisfied by it under the Loan Documents.

(e) Agent shall have received a certificate of a duly authorized officer of each U.S. Obligor, certifying (i) that attached copies of such U.S. Obligor's Organic Documents are true and complete, and in full force and effect, without amendment except as shown; (ii) that an attached copy of resolutions authorizing execution and delivery of the Loan Documents is true and complete, and that such resolutions are in full force and effect, were duly adopted, have not been amended, modified or revoked, and constitute all resolutions adopted with respect to this credit facility; and (iii) to the title, name and signature of each Person authorized to sign the Loan Documents. Agent may conclusively rely on this certificate until it is otherwise notified by the applicable U.S. Obligor in writing.

(f) Agent shall have received a written opinion of DLA Piper, as well as any local counsel to U.S. Borrowers or Agent, in form and substance satisfactory to Agent.

(g) Agent shall have received copies of the charter documents of each U.S. Obligor, certified by the Secretary of State or other appropriate official of such U.S. Obligor's jurisdiction of organization. Agent shall have received good standing certificates for each U.S. Obligor, issued by the Secretary of State or other appropriate official of such U.S. Obligor's jurisdiction of organization and each jurisdiction where such U.S. Obligor's conduct of business or ownership of Property necessitates qualification.

(h) Agent shall have received copies of policies or certificates of insurance for the insurance policies carried by U.S. Borrowers, all in compliance with the Loan Documents.

(i) Agent shall have completed its business, financial and legal due diligence of U.S. Obligors, including a roll-forward of its previous field examination, with results satisfactory to Agent. No material adverse change in the financial condition of any U.S. Obligor or in the quality, quantity or value of any U.S. Collateral shall have occurred since December 31, 2017.

(j) U.S. Borrowers shall have paid all fees and expenses to be paid to Agent and U.S. Lenders on the U.S. Closing Date.

(k) Agent shall have received a U.S. Borrowing Base Report as of March 31, 2018. Upon giving effect to the initial funding of U.S. Revolver Loans and issuance of Letters of Credit, and the payment by U.S. Borrowers of all fees and expenses incurred in connection herewith as well as any payables stretched beyond their customary payment practices, U.S. Availability shall be at least \$60,000,000.

6.2 Conditions Precedent to Initial Dutch Revolver Loans. In addition to the conditions set forth in **Section 6.3**, Dutch Lenders shall not be required to fund any requested Dutch Revolver Loan, issue any Dutch Letter of Credit, or otherwise extend credit to Dutch Borrowers hereunder, until the date ("Dutch Closing Date") that each of the following conditions has been satisfied or waived by Lenders:

(a) Borrower has requested in writing that Agent proceed with the closing of the credit facility and financial accommodations provided to Dutch Borrowers hereunder.

(b) Each Loan Document shall have been duly executed and delivered to Agent by each of the signatories thereto and all schedules thereto shall be acceptable to Agent, and each Dutch Obligor shall be in compliance with all terms thereof.

(c) Agent shall have received acknowledgments of all filings or recordations necessary to perfect its Liens in the Dutch Collateral, as well as written confirmation of the Dutch Obligors that such Liens are the only Liens upon the Dutch Collateral, except Permitted Liens.

(d) Agent shall have received duly executed agreements establishing each Dominion Account of Dutch Borrowers and related lockbox, in form and substance, and with financial institutions, satisfactory to Agent.

(e) Agent shall have received certificates, in form and substance satisfactory to it, from a knowledgeable Senior Officer of each Dutch Borrower certifying that, after giving effect to the initial Dutch Revolver Loans and transactions hereunder, (i) such Dutch Borrower is Solvent; (ii) no Default or Event of Default exists; (iii) the representations and warranties set forth in **Section 9** are true and correct; and (iv) such Dutch Borrower has complied with all agreements and conditions to be satisfied by it under the Loan Documents.

(f) Agent shall have received a certificate of a duly authorized officer of each Dutch Obligor, certifying (i) that attached copies of such Dutch Obligor's Organic Documents are true and complete, and in full force and effect, without amendment except as shown; (ii) that an attached copy of resolutions authorizing execution and delivery of the Loan Documents is true and complete, and that such resolutions are in full force and effect, were duly adopted, have not been amended, modified or revoked, and constitute all resolutions adopted with respect to this credit facility; and (iii) to the title, name and signature of each Person authorized to sign the Loan Documents. Agent may conclusively rely on this certificate until it is otherwise notified by the applicable Dutch Obligor in writing.

(g) Agent shall have received a written opinion of counsel, as well as any local counsel to Dutch Borrowers or Agent, in form and substance satisfactory to Agent.

(h) Agent shall have received copies of the charter documents of each Dutch Obligor, including a deed of incorporation (*akte van oprichting*), articles of association (*statuten*) and an up-to-date excerpt (*uittreksel*) from the Dutch Chamber of Commerce.

(i) Agent shall have received copies of policies or certificates of insurance for the insurance policies carried by Dutch Borrowers, all in compliance with the Loan Documents.

(j) Agent shall have completed its business, financial and legal due diligence of Dutch Obligors, including a roll-forward of its previous field examination, with results satisfactory to Agent. No material adverse change in the financial condition of any Dutch Obligor or in the quality, quantity or value of any Dutch Collateral shall have occurred since December 31, 2017.

(k) Dutch Borrowers shall have paid all fees and expenses to be paid to Agent and Dutch Lenders on the Dutch Closing Date.

(l) Agent shall have received all of the quarterly and annual filings required to be filed with the SEC prior to the Dutch Closing Date.

(m) Agent shall have received such additional documents deemed necessary by Agent, including but not limited to any amendments to the Loan Documents, and joinders adding Dutch Lenders to the Loan Documents, as necessary.

(n) Agent shall have received a Dutch Borrowing Base Report as of the end of the prior month. Upon giving effect to the initial funding of Dutch Revolver Loans and issuance of Letters of Credit, and the payment by Dutch Borrowers of all fees and expenses incurred in connection herewith as well as any payables stretched beyond their customary payment practices, Dutch Availability shall be at least \$10,000,000 and Global Availability shall be at least \$100,000,000.

(o) The Conversion Date shall have occurred.

(p) Each Lender has executed and delivered to Agent a loss sharing agreement, in form and substance satisfactory to Agent.

For the avoidance of doubt, no Dutch Borrower shall be a Borrower or an Obligor hereunder until the Dutch Closing Date has occurred.

6.3 Conditions Precedent to All Credit Extensions. Agent, Issuing Bank and Lenders shall in no event be required to make any credit extension hereunder (including funding any Revolver Loan, arranging any Letter of Credit, or granting any other accommodation to or for the benefit of any Borrower), if the following conditions are not satisfied on such date and upon giving effect

thereto:

- (a) No Default or Event of Default exists;
- (b) The representations and warranties of each Obligor in the Loan Documents are true and correct (except for representations and warranties that relate solely to an earlier date);
- (c) All conditions precedent in any Loan Document are satisfied;
- (d) No event has occurred or circumstance exists that has or could reasonably be expected to have a Material Adverse Effect; and
- (e) With respect to a Letter of Credit issuance, all LC Conditions are satisfied.

Each request (or deemed request) by a Borrower for any credit extension shall constitute a representation by Borrowers that the foregoing conditions are satisfied on the date of such request and on the date of the credit extension. As an additional condition to a credit extension, Agent may request any other information, certification, document, instrument or agreement as it deems appropriate.

6.4 Post-Closing Requirements. Borrowers shall deliver to Agent each of the following items in form and substance satisfactory to Agent within the time periods set forth below (or such later date as determined by Agent in its discretion):

6.4.1 Within 45 days after the U.S. Closing Date, Agent shall have received the Related Real Estate Documents for all Real Estate subject to a Mortgage.

6.4.2 Within 45 days after the U.S. Closing Date, Agent shall have received evidence that Borrower has separated its collections and disbursement accounts into separate Deposit Accounts.

SECTION 7. COLLATERAL

7.1 Grant of Security Interest. To secure the prompt payment and performance of its Obligations, each U.S. Obligor hereby grants to Agent, for the benefit of Secured Parties, a continuing security interest in and Lien upon all Property of such U.S. Obligor, including all of the following Property, whether now owned or hereafter acquired, and wherever located:

- (a) all Accounts;
- (b) all Chattel Paper, including electronic chattel paper;
- (c) all Commercial Tort Claims, including those shown on **Schedule 9.1.16**;
- (d) all Deposit Accounts;
- (e) all Documents;
- (f) all General Intangibles, including Intellectual Property;
- (g) all Goods, including Inventory, Equipment and fixtures;
- (h) all Instruments;
- (i) all Investment Property;
- (j) all Letter-of-Credit Rights;
- (k) all Supporting Obligations;
- (l) all monies, whether or not in the possession or under the control of Agent, a Lender, or a bailee or Affiliate of Agent or a Lender, including any Cash Collateral;
- (m) all accessions to, substitutions for, and all replacements, products, and cash and non-cash proceeds of the foregoing, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of any Collateral; and
- (n) all books and records (including customer lists, files, correspondence, tapes, computer programs, print-outs and computer records) pertaining to the foregoing.

Notwithstanding anything herein to the contrary, in no event shall the Collateral include (nor shall any defined term used herein include), and no Obligor shall be deemed to have granted a Lien in, any of such Obligor's right, title or interest in any of the following property (collectively, the "Excluded Collateral"):

(a) solely as it relates to U.S. Collateral (x) any of the outstanding voting equity interests or other ownership interests of a Foreign Subsidiary in excess of 65% of the voting power of all classes of equity interests or other ownership interests of such Foreign Subsidiary entitled to vote, (y) any of the outstanding equity interests or other ownership interests of a Subsidiary of a Foreign Subsidiary and (z) any assets of a Foreign Subsidiary or any subsidiary thereof;

(b) (x) any lease, license, contract, agreement, legal requirement or other third party arrangement, as such, or the assets subject thereto, if under the terms of such lease, license, contract, agreement, legal requirement or other third party arrangement, or Applicable Law with respect thereto, the valid grant of a Lien therein or in such assets to Agent is prohibited, prevented or conditioned and such prohibition, prevention or condition has not been or is not waived or the consent of the other party to such lease, license, contract, agreement, legal requirement or other third party arrangement has not been or is not otherwise obtained or under Applicable Law such prohibition, prevention or condition cannot be waived and (y) any assets which, if subject to this Agreement, would give a third party the right to terminate or otherwise amend any rights, benefits and/or obligations with respect to such Obligor in respect of those assets; provided, that the foregoing exclusion shall in no way be (1) construed to apply if any such prohibition would be rendered ineffective under the Uniform Commercial Code other applicable law or principles of equity, (2) construed so as to limit, impair or otherwise affect Agent's unconditional continuing Lien upon any rights or interests of such Obligor in or to the proceeds thereof, including monies due or to become due under any such lease, license, contract, or agreement (including any Accounts), in each case, that are not subject to such prohibitions to the extent that such proceeds are not themselves Excluded Collateral, or (3) construed to apply at such time as the condition causing such prohibition shall be remedied and, to the extent severable, "Collateral" shall include any portion of such lease, license, contract, agreement or assets subject thereto that does not result in such prohibition (it being understood and agreed that such Obligor shall have no obligations to obtain any consent or otherwise cause the Excluded Collateral described in this clause (ii) to constitute Collateral);

(c) any property or property right of such Obligor to the extent and for so long as the grant of a security interest pursuant to this Agreement in such Obligor's right, title or interest therein is prohibited by applicable law or regulation;

(d) any leasehold Real Estate that has 30 years or less to run on the lease or a rent-rack payable in respect thereof or any fee-owned Real Estate with a fair market value less than \$2,000,000 (other than fee-owned Real Estate in existence on the U.S. Closing Date which is to be subject to Agent's Lien pursuant to **Section 6.4.1**);

(e) any "intent to use" trademark applications for which a statement of use has not been filed and accepted with the U.S. Patent and Trademark Office (but only until such statement has been filed and accepted with the U.S. Patent and Trademark Office);

(f) any assets to the extent that a security interest in such assets would reasonably be expected to result in materially adverse tax consequences as reasonably determined by the Borrowers and Agent;

(g) other than with respect to Dutch Collateral and as necessary with respect to Account Debtor Approved Countries, any assets that require action under the law of any non-U.S. jurisdiction to create or perfect a security interest in such assets;

(h) any Intellectual Property owned by Super Micro Computer Holdings CV;

(i) those assets as to which Agent and Borrowers reasonably agree that the cost of obtaining such a Lien or perfection thereof are excessive in relation to the practical benefit to Lenders of the security to be afforded thereby;

(j) property (and the proceeds thereof) subject to a purchase money security interest or capitalized leases only to the extent and for so long as the contract or other agreement pursuant to which such Lien is granted prohibits the creation of any other Lien on such property (other than to the extent any such prohibition would be rendered ineffective under the Uniform Commercial Code or other applicable law or principles of equity); and

(k) the Excluded Accounts and the funds and other property held in, credited thereto or maintained in any such Excluded Account;

; provided that (i) "Excluded Collateral" shall not include any proceeds, products, substitutions or replacements of any Excluded Collateral (unless such proceeds, products, substitutions or replacements constitute Excluded Collateral) and (ii) none of the representations and warranties herein or in any other Loan Document shall be deemed to apply to property constituting Excluded Collateral.

7.2 Lien on Deposit Accounts; Cash Collateral.

7.2.1 Deposit Accounts. To further secure the prompt payment and performance of its Obligations, each Obligor hereby grants to Agent a continuing security interest in and Lien upon all amounts credited to any Deposit Account of such Obligor, including sums in any blocked, lockbox, sweep or collection account. Each Obligor hereby authorizes and directs each bank or other depository to deliver to Agent, upon request, all balances in any Deposit Account maintained for such Obligor, without inquiry into the authority or right of Agent to make such request.

7.2.2 Cash Collateral. Cash Collateral may be invested, at Agent's discretion (with the consent of Obligors, provided no Event of Default exists), but Agent shall have no duty to do so, regardless of any agreement or course of dealing with any Obligor, and shall have no responsibility for any investment or loss. As security for its Obligations, each Obligor hereby grants to Agent a security interest in and Lien upon all Cash Collateral delivered hereunder from time to time, whether held in a segregated cash collateral account or otherwise. Agent may apply Cash Collateral to payment of such Obligations as they become due, in such order as Agent may elect. All Cash Collateral and related deposit accounts shall be under the sole dominion and control of Agent, and no Obligor or other Person shall have any right to any Cash Collateral until Full Payment of the Obligations.

7.3 Real Estate Collateral.

7.3.1 Lien on Real Estate. The Obligations shall be secured by Mortgages upon all Real Estate owned by Borrowers, including the Real Estate set forth on **Schedule 7.3**. The Mortgages shall be duly recorded, at Borrowers' expense, in each office where such recording is required to constitute a fully perfected Lien on the Real Estate covered thereby. If any Borrower acquires Real Estate hereafter, Borrowers shall promptly notify Agent and, within 60 days, execute, deliver and record a first-priority Mortgage, in form and substance satisfactory to Agent, together with all Related Real Estate Documents.

7.3.2 Collateral Assignment of Leases. To further secure the prompt payment and performance of its Obligations, each Borrower hereby transfers and assigns to Agent all of such Borrower's right, title and interest in, to and under all now or hereafter existing leases of Real Estate to which such Borrower is a party, whether as lessor or lessee, and all extensions, renewals, modifications and proceeds thereof; provided that, Borrower shall not be obligated under this Section to transfer or assign to Agent any leases of Real Estate that are included in the definition of Excluded Collateral.

7.4 Other Collateral.

7.4.1 Commercial Tort Claims. Obligor shall promptly notify Agent in writing if any Obligor has a Commercial Tort Claim (other than, as long as no Default or Event of Default exists, a Commercial Tort Claim for less than \$100,000), shall promptly amend **Schedule 9.1.16** to include such claim, and shall take such actions as Agent deems appropriate to subject such claim to a duly perfected, first priority Lien in favor of Agent.

7.4.2 Certain After-Acquired Collateral. Obligor shall promptly (a) notify Agent if a Obligor obtains an interest in any Deposit Account, Chattel Paper, Document, Instrument, Intellectual Property, Investment Property or Letter-of-Credit Rights, and (b) upon request, take such actions as Agent deems appropriate to effect its perfected, first priority Lien on such Collateral, including obtaining any appropriate possession, control agreement or Lien Waiver. If Collateral is in the possession of a third party, at Agent's request, Obligor shall obtain an acknowledgment that such third party holds the Collateral for the benefit of Agent.

7.4.3 Equity Interests. Each Obligor shall, and will cause each of its Subsidiaries to, take such action from time to time as shall be necessary to ensure that each of its Subsidiaries is a wholly-owned Subsidiary and that Agent shall have, (i) for the benefit of Agent and U.S. Lenders, a first priority Lien (subject to Permitted Liens) on all Equity Interests of each Subsidiary of a U.S. Obligor, provided that no U.S. Obligor shall be required to pledge more than 65% of the voting Equity Interests (within the meaning of Section 1.956-2(c)(2) of the U.S. Treasury Regulations) of any first-tier Foreign Subsidiary as U.S. Collateral for the U.S. Obligations and (ii) for the benefit of Agent and Dutch Lenders, with respect to a Dutch Obligor, a first-priority Lien (subject to Permitted Liens) on all Equity Interests of each Subsidiary of a Dutch Obligor and Guarantor of the Dutch Obligations. In the event that any additional Equity Interests shall be issued by any Subsidiary, the applicable Dutch Obligor shall or shall cause each of its Subsidiaries to, concurrently with such issuance, deliver to Agent to the extent required by the applicable Loan Documents the certificates evidencing such Equity Interests, accompanied by undated powers executed in blank and to take such other action as Agent shall reasonably request to perfect the security interest created therein pursuant to such Loan Documents.

7.5 Limitations. The Lien on Collateral granted hereunder is given as security only and shall not subject Agent or any Lender to, or in any way modify, any obligation or liability of Borrowers relating to any Collateral. In no event shall the grant of any Lien under any Loan Document secure an Excluded Swap Obligation of the granting Obligor.

7.6 Further Assurances. All Liens granted to Agent under the Loan Documents are for the benefit of Secured Parties. Promptly upon request, Borrowers shall deliver such instruments and agreements, and shall take such actions, as Agent deems appropriate under Applicable Law to evidence or perfect its Lien on any Collateral, or otherwise to give effect to the intent of this Agreement. Each Borrower authorizes Agent to file any financing statement that describes the Collateral as “all assets” or “all personal property” of such Borrower, or words to similar effect, and ratifies any action taken by Agent before the U.S. Closing Date to effect or perfect its Lien on any U.S. Collateral and the Dutch Closing Date to effect or perfects its Lien on the Dutch Collateral.

SECTION 8. COLLATERAL ADMINISTRATION

8.1 Borrowing Base Reports.

8.1.1 Dutch Borrowing Base Reports. (i) so long as no Trigger Period exists, by the 20th day of each month, Dutch Borrowers shall deliver to Agent (and Agent shall promptly deliver same to Dutch Lenders) a Dutch Borrowing Base Report as of the close of business of the previous month, (ii) during the existence of a Trigger Period, by the second Business Day of each week, Dutch Borrowers shall deliver to Agent (and Agent shall promptly deliver same to Dutch Lenders) a Dutch Borrowing Base Report as of the close of business of the previous week, and (iii) at such other times as Agent may request. All information (including calculation of Dutch Availability) in a Dutch Borrowing Base Report shall be certified by Dutch Borrowers. Agent may from time to time adjust such report (a) to reflect Agent’s reasonable estimate of declines in value of Dutch Collateral, due to collections received in the applicable Dominion Account or otherwise; (b) to adjust advance rates to reflect changes in dilution, quality, mix and other factors affecting Dutch Collateral; and (c) to the extent any information or calculation does not comply with this Agreement.

8.1.2 U.S. Borrowing Base Reports. (i) so long as no Trigger Period exists, by the 20th day of each month, U.S. Borrowers shall deliver to Agent (and Agent shall promptly deliver same to U.S. Lenders) a U.S. Borrowing Base Report as of the close of business of the previous month, (ii) during the existence of a Trigger Period, by the second Business Day of each week, U.S. Borrowers shall deliver to Agent (and Agent shall promptly deliver same to U.S. Lenders) a U.S. Borrowing Base Report as of the close of business of the previous week, and (iii) at such other times as Agent may request. All information (including calculation of U.S. Availability and Global Availability) in a U.S. Borrowing Base Report shall be certified by U.S. Borrowers. Agent may from time to time adjust such report (a) to reflect Agent’s reasonable estimate of declines in value of U.S. Collateral, due to collections received in the applicable Dominion Account or otherwise; (b) to adjust advance rates to reflect changes in dilution, quality, mix and other factors affecting U.S. Collateral; and (c) to the extent any information or calculation does not comply with this Agreement.

8.2 Accounts.

8.2.1 Records and Schedules of Accounts. Each Borrower shall keep accurate and complete records of its Accounts, including all payments and collections thereon, and shall submit to Agent sales, collection, reconciliation and other reports in form satisfactory to Agent, on such periodic basis as Agent may request. Each Borrower shall also provide to Agent, on or before the 15th day of each month, a detailed aged trial balance of all Accounts as of the end of the preceding month, specifying each Account’s Account Debtor name and address, amount, invoice date and due date, showing any discount, allowance, credit, authorized return or dispute, and including such proof of delivery, copies of invoices and invoice registers, copies of related documents, repayment histories, status reports and other information as Agent may reasonably request. If Accounts in an aggregate face amount of \$1,000,000 or more cease to be Eligible Credit Insured Accounts or Eligible Non-Credit Insured Accounts, Borrowers shall notify Agent of such occurrence promptly (and in any event within one Business Day) after any Borrower has knowledge thereof.

8.2.2 Taxes. If an Account of any Borrower includes a charge for any Taxes, Agent is authorized, in its discretion, to pay the amount thereof to the proper taxing authority for the account of such Borrower and to charge Borrowers therefor; provided, that neither Agent nor Lenders shall be liable for any Taxes that may be due from Borrowers or with respect to any Collateral.

8.2.3 Account Verification. Whether or not a Default or Event of Default exists, Agent shall have the right at any time, in the name of Agent, any designee of Agent or any Borrower, to verify the validity, amount or any other matter relating to any Accounts of Borrowers by mail, telephone or otherwise. Borrowers shall cooperate fully with Agent in an effort to facilitate and promptly conclude any such verification process.

8.2.4 Maintenance of Dominion Account. Borrowers shall maintain Dominion Accounts pursuant to lockbox or other arrangements acceptable to Agent. Borrowers shall obtain an agreement (in form and substance satisfactory to Agent) from each lockbox servicer and Dominion Account bank, establishing Agent’s control over and Lien in the lockbox or Dominion Account, which prior to the Conversion Date shall be exercised at all times and after the Conversion Date may only be

exercised by Agent during any Trigger Period, requiring immediate deposit of all remittances received in the lockbox to a Dominion Account, and waiving offset rights of such servicer or bank, except for customary administrative charges. Prior to the Conversion Date and during a Trigger Period upon and after the Conversion Date, if a Dominion Account is not maintained with Bank of America, Agent may require immediate transfer of all funds in such account to a Dominion Account maintained with Bank of America. Agent and Lenders assume no responsibility to Borrowers for any lockbox arrangement or Dominion Account, including any claim of accord and satisfaction or release with respect to any Payment Items accepted by any bank.

8.2.5 Proceeds of Collateral. Borrowers shall request in writing and otherwise take all necessary steps to ensure that all payments on Accounts or otherwise relating to Collateral are made directly to a Dominion Account (or a lockbox relating to a Dominion Account). If any Borrower or Subsidiary receives cash or Payment Items with respect to any Collateral, it shall hold same in trust for Agent and promptly (not later than the next Business Day) deposit same into a Dominion Account.

8.3 Inventory.

8.3.1 Records and Reports of Inventory. Each Borrower shall keep accurate and complete records of its Inventory, including costs and daily withdrawals and additions, and shall submit to Agent inventory and reconciliation reports in form satisfactory to Agent, on such periodic basis as Agent may request. Each Borrower shall conduct a physical inventory at least once per calendar year (and on a more frequent basis if requested by Agent when an Event of Default exists) and periodic cycle counts consistent with historical practices, and shall provide to Agent a report based on each such inventory and count promptly upon completion thereof, together with such supporting information as Agent may request. Agent may participate in and observe each physical count.

8.3.2 Returns of Inventory. No Borrower shall return any Inventory to a supplier, vendor or other Person, whether for cash, credit or otherwise, unless (a) such return is in the Ordinary Course of Business; (b) no Default, Event of Default, Dutch Overadvance, U.S. Overadvance or Overadvance exists or would result therefrom; (c) Agent is promptly notified if the aggregate Value of all Inventory returned in any month exceeds \$1,000,000; and (d) any payment received by a Borrower for a return is promptly remitted to Agent for application to the Obligations.

8.3.3 Acquisition, Sale and Maintenance. No Borrower shall acquire or accept any Inventory on consignment or approval, and shall take all steps to assure that all Inventory is produced in accordance with Applicable Law, including the FLSA. No Borrower shall sell any Inventory on consignment or approval or any other basis under which the customer may return or require a Borrower to repurchase such Inventory. Borrowers shall use, store and maintain all Inventory with reasonable care and caution, in accordance with applicable standards of any insurance and in conformity with all Applicable Law, and shall make current rent payments (within applicable grace periods provided for in leases) at all locations where any Collateral is located.

8.4 Equipment.

8.4.1 Records and Schedules of Equipment. Each Borrower shall keep accurate and complete records of its Equipment, including kind, quality, quantity, cost, acquisitions and dispositions thereof, and shall submit to Agent, on such periodic basis as Agent may request, a current schedule thereof, in form satisfactory to Agent. Promptly upon request, Borrowers shall deliver to Agent evidence of their ownership or interests in any Equipment.

8.4.2 Dispositions of Equipment. No Borrower shall sell, lease or otherwise dispose of any Equipment, without the prior written consent of Agent, other than (a) a Permitted Asset Disposition; and (b) replacement of Equipment that is worn, damaged or obsolete with Equipment of like function and value, if the replacement Equipment is acquired substantially contemporaneously with such disposition and is free of Liens.

8.4.3 Condition of Equipment. The Equipment is in good operating condition and repair, and all necessary replacements and repairs have been made so that its value and operating efficiency are preserved at all times, reasonable wear and tear excepted. Each Borrower shall ensure that the Equipment is mechanically and structurally sound, and capable of performing the functions for which it was designed, in accordance with manufacturer specifications. No Borrower shall permit any Equipment to become affixed to Real Estate unless any landlord or mortgagee delivers a Lien Waiver.

8.5 Deposit Accounts. Schedule 8.5 lists all Deposit Accounts maintained by Borrowers, including Dominion Accounts. Each Borrower shall take all actions necessary to establish Agent's first priority Lien on each Deposit Account other than Excluded Accounts. Borrowers shall be the sole account holders of each Deposit Account and shall not allow any Person (other than Agent and the depository bank) to have control over their Deposit Accounts or any Property deposited therein. Borrowers shall promptly notify Agent of any opening or closing of a Deposit Account and, with the consent of Agent, will amend Schedule 8.5 to reflect same.

8.6 General Provisions.

8.6.1 Location of Collateral. All tangible items of Collateral, other than Inventory in transit, shall at all times be kept by Borrowers at the business locations set forth in **Schedule 8.6.1**, except that Borrowers may (a) make sales or other dispositions of Collateral in accordance with **Section 10.2.6**; and (b) move Collateral to another location in the United States, upon 30 Business Days prior written notice to Agent.

8.6.2 Insurance of Collateral; Condemnation Proceeds.

(a) Each Borrower shall maintain insurance with respect to the Collateral, covering casualty, hazard, theft, malicious mischief, flood and other risks, in amounts, with endorsements and with insurers (with a Best rating of at least A+, unless otherwise approved by Agent in its discretion) satisfactory to Agent; provided, that if Real Estate secures any Obligations, flood hazard diligence, documentation and insurance for such Real Estate shall comply with all Flood Laws or shall otherwise be satisfactory to all Lenders. All proceeds under each policy shall be payable to Agent. From time to time upon request, Borrowers shall deliver to Agent the originals or certified copies of its insurance policies and updated flood plain searches. Unless Agent shall agree otherwise, each policy shall include satisfactory endorsements (i) showing Agent as loss payee; (ii) requiring 30 days prior written notice to Agent in the event of cancellation of the policy for any reason whatsoever; and (iii) specifying that the interest of Agent shall not be impaired or invalidated by any act or neglect of any Borrower or the owner of the Property, nor by the occupation of the premises for purposes more hazardous than are permitted by the policy. If any Borrower fails to provide and pay for any insurance, Agent may, at its option, but shall not be required to, procure the insurance and charge Borrowers therefor. Each Borrower agrees to deliver to Agent, promptly as rendered, copies of all reports made to insurance companies. While no Event of Default exists, Borrowers may (i) settle, adjust or compromise any insurance claim, as long as the proceeds are delivered to Agent and (ii) later cancel any insurance purchased by Agent, but only after providing Agent with evidence reasonably satisfactory to Agent that Borrowers have obtained insurance as required by this Agreement. If an Event of Default exists, only Agent shall be authorized to settle, adjust and compromise such claims.

(b) Any proceeds of insurance (other than proceeds from workers' compensation or D&O insurance) and any awards arising from condemnation of any Collateral shall be paid to Agent. Any such proceeds or awards that relate to Inventory shall be applied to payment of the Revolver Loans, and then to other Obligations.

(c) If requested by Borrowers in writing within 15 days after Agent's receipt of any insurance proceeds or condemnation awards relating to any loss or destruction of Equipment or Real Estate, Borrowers may use such proceeds or awards to repair or replace such Equipment or Real Estate (and until so used, the proceeds shall be held by Agent as Cash Collateral) as long as (i) no Default or Event of Default exists; (ii) such repair or replacement is promptly undertaken and concluded, in accordance with plans satisfactory to Agent; (iii) replacement buildings are constructed on the sites of the original casualties and are of comparable size, quality and utility to the destroyed buildings; (iv) the repaired or replaced Property is free of Liens, other than Permitted Liens that are not Purchase Money Liens; (v) Borrowers comply with disbursement procedures for such repair or replacement as Agent may reasonably require; and (vi) the aggregate amount of such proceeds or awards from any single casualty or condemnation does not exceed \$1,000,000.

8.6.3 Protection of Collateral. All expenses of protecting, storing, warehousing, insuring, handling, maintaining and shipping any Collateral, all Taxes payable with respect to any Collateral (including any sale thereof), and all other payments required to be made by Agent to any Person to realize upon any Collateral, shall be borne and paid by Borrowers. Agent shall not be liable or responsible in any way for the safekeeping of any Collateral, for any loss or damage thereto (except for reasonable care in its custody while Collateral is in Agent's actual possession), for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency or other Person whatsoever, but the same shall be at Borrowers' sole risk.

8.6.4 Defense of Title. Each Borrower shall defend its title to Collateral and Agent's Liens therein against all Persons, claims and demands, except Permitted Liens.

8.7 Power of Attorney. Each Borrower hereby irrevocably constitutes and appoints Agent (and all Persons designated by Agent) as such Borrower's true and lawful attorney (and agent-in-fact) for the purposes provided in this Section. Agent, or Agent's designee, may (but shall have no obligation to), without notice and in either its or a Borrower's name, but at the cost and expense of Borrowers:

(a) Endorse a Borrower's name on any Payment Item or other proceeds of Collateral (including proceeds of insurance) that come into Agent's possession or control; and

(b) During an Event of Default, (i) notify any Account Debtors of the assignment of their Accounts, demand and enforce payment of Accounts by legal proceedings or otherwise, and generally exercise any rights and remedies with respect to Accounts; (ii) settle, adjust, modify, compromise, discharge or release any Accounts or other Collateral, or any legal proceedings brought to collect Accounts or Collateral; (iii) sell or assign any Accounts and other Collateral upon such terms, for such amounts and at such times as Agent deems advisable; (iv) collect, liquidate and receive balances in Deposit Accounts or investment accounts, and take control, in any manner, of proceeds of Collateral; (v) prepare, file and sign a Borrower's name to a proof of claim or other document in a bankruptcy of an Account Debtor, or to any notice, assignment or satisfaction of Lien or similar document; (vi) receive, open and dispose of mail addressed to a Borrower, and notify postal authorities to deliver any such mail to an address designated by Agent; (vii) endorse any Chattel Paper, Document, Instrument, bill of lading, or other document or agreement relating to any Accounts, Inventory or other Collateral; (viii) use a Borrower's stationery and sign its name to verifications of Accounts and notices to Account Debtors; (ix) use information contained in any data processing, electronic or information systems relating to Collateral; (x) make and adjust claims under insurance policies; (xi) take any action as may be necessary or appropriate to obtain payment under any letter of credit, banker's acceptance or other instrument for which a Borrower is a beneficiary; (xii) exercise any voting or other rights under or with respect to any Investment Property; and (xiii) take all other actions as Agent deems appropriate to fulfill any Borrower's obligations under the Loan Documents.

SECTION 9. REPRESENTATIONS AND WARRANTIES

9.1 General Representations and Warranties. To induce Agent and Lenders to enter into this Agreement and to make available the Revolver Commitments, Revolver Loans and Letters of Credit, each Borrower represents and warrants that:

9.1.1 Organization and Qualification. Each Borrower and Subsidiary is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization. Each Borrower and Subsidiary is duly qualified, authorized to do business and in good standing as a foreign corporation in each jurisdiction where failure to be so qualified could reasonably be expected to have a Material Adverse Effect. No Obligor is an EEA Financial Institution.

9.1.2 Power and Authority. Each Obligor is duly authorized to execute, deliver and perform its Loan Documents. The execution, delivery and performance of the Loan Documents have been duly authorized by all necessary action, and do not (a) require any consent or approval of any holders of Equity Interests of any Obligor, except those already obtained; (b) contravene the Organic Documents of any Obligor; (c) violate or cause a default under any Applicable Law or Material Contract; or (d) result in or require imposition of a Lien (other than Permitted Liens) on any Obligor's Property.

9.1.3 Enforceability. Each Loan Document is a legal, valid and binding obligation of each Obligor party thereto, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

9.1.4 Capital Structure. **Schedule 9.1.4** shows, for each Borrower and Subsidiary, its name, jurisdiction of organization, authorized and issued Equity Interests, holders of its Equity Interests, and agreements binding on such holders with respect to such Equity Interests. Except as disclosed on **Schedule 9.1.4**, in the five years preceding the U.S. Closing Date, no Borrower or Subsidiary has acquired any substantial assets from any other Person nor been the surviving entity in a merger or combination. Each Borrower has good title to its Equity Interests in its Subsidiaries, subject only to Agent's Lien, and all such Equity Interests are duly issued, fully paid and non-assessable. There are no outstanding purchase options, warrants, subscription rights, agreements to issue or sell, convertible interests, phantom rights or powers of attorney relating to Equity Interests of any Borrower or Subsidiary.

9.1.5 Title to Properties; Priority of Liens. Each Borrower and Subsidiary has good and marketable title to (or valid leasehold interests in) all of its Real Estate, and good title to all of its personal Property, including all Property reflected in any financial statements delivered to Agent or Lenders, in each case free of Liens except Permitted Liens. No Real Estate is located in a special flood hazard zone, except as disclosed on **Schedule 9.1.5**. Each Borrower and Subsidiary has paid and discharged all lawful claims that, if unpaid, could become a Lien on its Properties, other than Permitted Liens. All Liens of Agent in the Collateral are duly perfected, first priority Liens, subject only to Permitted Liens that are expressly allowed to have priority over Agent's Liens.

9.1.6 Accounts. Agent may rely, in determining which Accounts are Eligible Accounts, Eligible Credit Insured Accounts or Eligible Non-Credit Insured Accounts, on all statements and representations made by Borrowers with respect thereto. Borrowers warrant, with respect to each Account shown as an Eligible Credit Insured Accounts or Eligible Non-Credit Insured Accounts in any Borrowing Base Report, that:

- (a) it is genuine and in all respects what it purports to be;
- (b) it arises out of a completed, bona fide sale and delivery of goods or rendition of services in the Ordinary Course of Business, and substantially in accordance with any purchase order, contract or other document relating thereto;
- (c) it is for a sum certain, maturing as stated in the applicable invoice, a copy of which has been furnished or is available to Agent on request;
- (d) it is not subject to any offset, Lien (other than Agent's Lien), deduction, defense, dispute, counterclaim or other adverse condition except as arising in the Ordinary Course of Business and disclosed to Agent; and it is absolutely owing by the Account Debtor, without contingency of any kind;
- (e) no purchase order, agreement, document or Applicable Law restricts assignment of the Account to Agent (regardless of whether, under the UCC, the restriction is ineffective), and the applicable Borrower is the sole payee or remittance party shown on the invoice;
- (f) no extension, compromise, settlement, modification, credit, deduction or return has been authorized or is in process with respect to the Account, except discounts or allowances granted in the Ordinary Course of Business for prompt payment that are reflected on the face of the invoice related thereto and in the reports submitted to Agent hereunder; and
- (g) to the best of Borrowers' knowledge, (i) there are no facts or circumstances that are reasonably likely to impair the enforceability or collectability of such Account; (ii) the Account Debtor had the capacity to contract when the Account arose, continues to meet the applicable Borrower's customary credit standards, is Solvent, is not contemplating or subject to an Insolvency Proceeding, and has not failed, or suspended or ceased doing business; and (iii) there are no proceedings or actions threatened or pending against any Account Debtor that could reasonably be expected to have a material adverse effect on the Account Debtor's financial condition.

9.1.7 Financial Statements. The consolidated and consolidating balance sheets, and related statements of income, cash flow and shareholders equity, of Borrowers and Subsidiaries that have been and are hereafter delivered to Agent and Lenders, are prepared in accordance with GAAP, and fairly present the financial positions and results of operations of Borrowers and Subsidiaries at the dates and for the periods indicated. All projections delivered from time to time to Agent and Lenders have been prepared in good faith, based on reasonable assumptions in light of the circumstances at such time. Since December 31, 2017, there has been no change in the condition, financial or otherwise, of any Borrower or Subsidiary that could reasonably be expected to have a Material Adverse Effect. No financial statement delivered to Agent or Lenders at any time contains any untrue statement of a material fact, nor fails to disclose any material fact necessary to make such statement not materially misleading. Each Borrower and Subsidiary is Solvent.

9.1.8 Surety Obligations. No Borrower or Subsidiary is obligated as surety or indemnitor under any bond or other contract that assures payment or performance of any obligation of any Person, except as permitted hereunder.

9.1.9 Taxes. Each Borrower and Subsidiary has filed all federal, state and local income tax returns and other material tax returns or other reports that it is required by law to file, and has paid, or made provision for the payment of, all material Taxes upon it, its income and its Properties that are due and payable, except to the extent being Properly Contested.

9.1.10 Brokers. There are no brokerage commissions, finder's fees or investment banking fees payable in connection with any transactions contemplated by the Loan Documents.

9.1.11 Intellectual Property. Each Borrower and Subsidiary owns or has the lawful right to use all Intellectual Property necessary for the conduct of its business, without conflict with any rights of others. There is no pending or, to any Borrower's knowledge, threatened Intellectual Property Claim with respect to any Borrower, any Subsidiary or any of their Property (including any Intellectual Property). Except as disclosed on **Schedule 9.1.11**, no Borrower or Subsidiary pays or owes any royalty or other compensation to any Person with respect to any Intellectual Property. All Intellectual Property owned, used or licensed by, or otherwise subject to any interests of, any Borrower or Subsidiary is shown on **Schedule 9.1.11**.

9.1.12 Governmental Approvals. Each Borrower and Subsidiary has, is in compliance with, and is in good standing with respect to, all Governmental Approvals necessary to conduct its business and to own, lease and operate its Properties. All necessary import, export or other licenses, permits or certificates for the import or handling of any goods or other Collateral have been procured and are in effect, and Borrowers and Subsidiaries have complied with all foreign and domestic laws with respect to the shipment and importation of any goods or Collateral, except where noncompliance could not reasonably be expected to have a Material Adverse Effect.

9.1.13 Compliance with Laws. Each Borrower and Subsidiary has duly complied, and its Properties and business operations are in compliance, in all material respects with all Applicable Law, except where noncompliance could not reasonably be expected to have a Material Adverse Effect. There have been no citations, notices or orders of material noncompliance issued to any Borrower or Subsidiary under any Applicable Law. No Inventory has been produced in violation of the FLSA.

9.1.14 Compliance with Environmental Laws. Except as disclosed on **Schedule 9.1.14**, no Borrower's or Subsidiary's past or present operations, Real Estate or other Properties are subject to any federal, state or local investigation to determine whether any remedial action is needed to address any environmental pollution, hazardous material or environmental clean-up. No Borrower or Subsidiary has received any Environmental Notice. No Borrower or Subsidiary has any contingent liability with respect to any Environmental Release, environmental pollution or hazardous material on any Real Estate now or previously owned, leased or operated by it.

9.1.15 Burdensome Contracts. No Borrower or Subsidiary is a party or subject to any contract, agreement or charter restriction that could reasonably be expected to have a Material Adverse Effect. No Borrower or Subsidiary is party or subject to any Restrictive Agreement, except as shown on **Schedule 9.1.15**. No such Restrictive Agreement prohibits the execution, delivery or performance of any Loan Document by an Obligor.

9.1.16 Litigation. Except as shown on **Schedule 9.1.16**, there are no proceedings or investigations pending or, to any Borrower's knowledge, threatened against any Borrower or Subsidiary, or any of their businesses, operations, Properties, prospects or conditions, that (a) relate to any Loan Documents or transactions contemplated thereby; or (b) could reasonably be expected to have a Material Adverse Effect if determined adversely to any Borrower or Subsidiary. Except as shown on such Schedule, no Obligor has a Commercial Tort Claim (other than, as long as no Default or Event of Default exists, a Commercial Tort Claim for less than \$100,000). No Borrower or Subsidiary is in default with respect to any order, injunction or judgment of any Governmental Authority.

9.1.17 No Defaults. No event or circumstance has occurred or exists that constitutes a Default or Event of Default. No Borrower or Subsidiary is in default, and no event or circumstance has occurred or exists that with the passage of time or giving of notice would constitute a default, under any Material Contract or in the payment of any Borrowed Money. There is no basis upon which any party (other than a Borrower or Subsidiary) could terminate a Material Contract prior to its scheduled termination date.

9.1.18 ERISA. Except as could not reasonably be expected, whether individually or in the aggregate, to have a Material Adverse Effect:

(a) (i) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code, and other federal and state laws, (ii) each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the knowledge of Borrowers, nothing has occurred which would prevent, or cause the loss of, such qualification and (iii) each Obligor and ERISA Affiliate has met all applicable requirements under the Code, ERISA and the Pension Protection Act of 2006, and no application for a waiver of the minimum funding standards or an extension of any amortization period has been made with respect to any Plan.

(b) (i) There are no pending or, to the knowledge of Borrowers, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan, and (ii) there has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is at least 60%; and no Obligor or ERISA Affiliate knows of any reason that such percentage could reasonably be expected to drop below 60%; (iii) no Obligor or ERISA Affiliate has incurred any liability to the PBGC except for the payment of premiums, and no premium payments are due and unpaid; (iv) no Obligor or ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA; and (v) no Pension Plan has been terminated by its plan administrator or the PBGC, and no fact or circumstance exists that could reasonably be expected to cause the PBGC to institute proceedings to terminate a Pension Plan.

(d) With respect to any Foreign Plan, (i) all employer and employee contributions required by law or by the terms of the Foreign Plan have been made, or, if applicable, accrued, in accordance with normal accounting practices; (ii) the fair market value of the assets of each funded Foreign Plan, the liability of each insurer for any Foreign Plan funded through insurance, or the book reserve established for any Foreign Plan, together with any accrued

contributions, is sufficient to procure or provide for the accrued benefit obligations with respect to all current and former participants in such Foreign Plan according to the actuarial assumptions and valuations most recently used to account for such obligations in accordance with applicable generally accepted accounting principles; and (iii) it has been registered as required and has been maintained in good standing with applicable regulatory authorities.

9.1.19 Trade Relations. There exists no actual or threatened termination, limitation or modification of any business relationship between any Borrower or Subsidiary and any customer or supplier, or any group of customers or suppliers, who individually or in the aggregate are material to the business of such Borrower or Subsidiary. There exists no condition or circumstance that could reasonably be expected to impair the ability of any Borrower or Subsidiary to conduct its business at any time hereafter in substantially the same manner as conducted on the U.S. Closing Date.

9.1.20 Labor Relations. Except as described on **Schedule 9.1.20**, no Borrower or Subsidiary is party to or bound by any collective bargaining agreement, management agreement or consulting agreement. There are no material grievances, disputes or controversies with any union or other organization of any Borrower's or Subsidiary's employees, or, to any Borrower's knowledge, any asserted or threatened strikes, work stoppages or demands for collective bargaining.

9.1.21 Payable Practices. No Borrower or Subsidiary has made any material change in its historical accounts payable practices from those in effect on the U.S. Closing Date.

9.1.22 Not a Regulated Entity. No Obligor is (a) an "investment company" or a "person directly or indirectly controlled by or acting on behalf of an investment company" within the meaning of the Investment Company Act of 1940; or (b) subject to regulation under the Federal Power Act, the Interstate Commerce Act, any public utilities code or any other Applicable Law regarding its authority to incur Debt.

9.1.23 Margin Stock. No Borrower or Subsidiary is engaged, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No Revolver Loan proceeds or Letters of Credit will be used by Borrowers to purchase or carry, or to reduce or refinance any Debt incurred to purchase or carry, any Margin Stock or for any related purpose governed by Regulations T, U or X of the Board of Governors.

9.1.24 OFAC. No Borrower, Subsidiary, or any director, officer, employee, agent, affiliate or representative thereof, is or is owned or controlled by any individual or entity that is currently the target of any Sanction or is located, organized or resident in a Designated Jurisdiction.

9.1.25 Anti-Corruption Laws. Each Borrower and Subsidiary has conducted its business in accordance with applicable anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

9.1.26 Dutch Works Councils Act. At the Dutch Closing Date and at the time of delivery of each Borrowing Base Certificate, all requirements under the Dutch Works Councils Act have been complied with by each Dutch Obligor in respect of the execution, delivery and performance of the terms and provisions of each of the Loan Documents to which it is party and no advice is required to be sought from any works council of a Dutch Obligor in respect of the execution, delivery and performance of the terms and provisions of each of the Loan Documents to which it is party and the transactions contemplated thereby since no works council has been established or is in the process of being established for the Dutch Obligors' business.

9.1.27 Centre of Main Interests. For the purposes of the Insolvency Regulation, each Dutch Obligor's centre of main interest (as that term is used in Article 3(1) of the Insolvency Regulation) is situated in its jurisdiction of incorporation and it has no "establishment" (as that term is used in Article 2(10) of the Insolvency Regulation) in any other jurisdiction.

9.1.28 Advanced Business Computer, Inc. Advanced Business Computer, Inc. has no material assets nor material liabilities and is a Dormant subsidiary of Borrower.

9.2 Complete Disclosure. No Loan Document contains any untrue statement of a material fact, nor fails to disclose any material fact necessary to make the statements contained therein not materially misleading. There is no fact or circumstance that any Obligor has failed to disclose to Agent in writing that could reasonably be expected to have a Material Adverse Effect.

SECTION 10. COVENANTS AND CONTINUING AGREEMENTS

10.1 Affirmative Covenants. As long as any Revolver Commitments or Obligations are outstanding, each Borrower shall, and shall cause each Subsidiary to:

10.1.1 Inspections; Appraisals.

(a) Permit Agent from time to time, subject (unless a Default or Event of Default exists) to reasonable notice

and normal business hours, to visit and inspect the Properties of any Borrower or Subsidiary, inspect, audit and make extracts from any Borrower's or Subsidiary's books and records, and discuss with its officers, employees, agents, advisors and independent accountants such Borrower's or Subsidiary's business, financial condition, assets, prospects and results of operations. Lenders may participate in any such visit or inspection, at their own expense. Secured Parties shall have no duty to any Obligor to make any inspection, nor to share any results of any inspection, appraisal or report with any Obligor. Borrowers acknowledge that all inspections, appraisals and reports are prepared by Agent and Lenders for their purposes, and Borrowers shall not be entitled to rely upon them.

(b) Reimburse Agent for all its charges, costs and expenses in connection with (i) examinations of Obligors' books and records or any other financial or Collateral matters as it deems appropriate, (x) prior to the Conversion Date, up to two times per Loan Year and (y) after the Conversion Date, up to one time per Loan Year; and (ii) (x) prior to the Conversion Date, up to two appraisals of Inventory per Loan Year and (y) after the Conversion Date, up to one appraisal of Inventory per Loan Year; provided, that if an examination or appraisal is initiated during a Default or Event of Default or during a Loan Year in which a Due Diligence Trigger Period exists or existed, all charges, costs and expenses relating thereto shall be reimbursed by Borrowers without regard to such limits. Borrowers shall pay Agent's then standard charges for examination activities, including charges for its internal examination and appraisal groups, as well as the charges of any third party used for such purposes. No Dutch Borrowing Base or U.S. Borrowing Base calculation shall include Collateral acquired in a Permitted Acquisition or otherwise outside the Ordinary Course of Business until completion of applicable field examinations and appraisals (which shall not be included in the limits provided above) satisfactory to Agent.

10.1.2 Financial and Other Information. Keep adequate records and books of account with respect to its business activities, in which proper entries are made in accordance with GAAP reflecting all financial transactions; and furnish to Agent and Lenders:

(a) as soon as available, and in any event within 90 days after the close of each Fiscal Year, balance sheets as of the end of such Fiscal Year and the related statements of income, cash flow and shareholders equity for such Fiscal Year, on consolidated and consolidating bases for Borrowers and Subsidiaries, which consolidated statements shall be audited and certified (without qualification) by a firm of independent certified public accountants of recognized standing selected by Borrowers and acceptable to Agent, and shall set forth in comparative form corresponding figures for the preceding Fiscal Year and other information acceptable to Agent;

(b) as soon as available, and in any event within 30 days after the end of each month, unaudited balance sheets as of the end of such month and the related statements of income and cash flow for such month and for the portion of the Fiscal Year then elapsed, on consolidated and consolidating bases for Borrowers and Subsidiaries, setting forth in comparative form corresponding figures for the preceding Fiscal Year and certified by the chief financial officer of Borrower Agent as prepared in accordance with GAAP and fairly presenting the financial position and results of operations for such month and period, subject to normal year-end adjustments and the absence of footnotes

(c) as soon as available, and in any event within 45 days after the end of each Fiscal Quarter (but within 60 days after the last Fiscal Quarter in a Fiscal Year), unaudited balance sheets as of the end of such Fiscal Quarter and the related statements of income and cash flow for such Fiscal Quarter and for the portion of the Fiscal Year then elapsed, on consolidated and consolidating bases for Borrowers and Subsidiaries, setting forth in comparative form corresponding figures for the preceding Fiscal Year and certified by the chief financial officer of Borrower Agent as prepared in accordance with GAAP and fairly presenting the financial position and results of operations for such Fiscal Quarter and period, subject to normal year-end adjustments and the absence of footnotes;

(d) concurrently with delivery of financial statements under clauses (a) and (b) above, or more frequently if requested by Agent while a Default or Event of Default exists, a Compliance Certificate executed by the chief financial officer of Borrower Agent;

(e) concurrently with delivery of financial statements under clause (a) above, copies of all management letters and other material reports submitted to Borrowers by their accountants in connection with such financial statements;

(f) not later than 30 days prior to the end of each Fiscal Year, projections of Borrowers' consolidated balance sheets, results of operations, cash flow, Global Availability, Dutch Availability and U.S. Availability for the next Fiscal Year, month by month;

(g) at Agent's request, a listing of each Borrower's trade payables, specifying the trade creditor and balance due, and a detailed trade payable aging, all in form satisfactory to Agent;

(h) promptly after the sending or filing thereof, copies of any proxy statements, financial statements or reports that any Borrower has made generally available to its shareholders; copies of any regular, periodic and special reports or registration statements or prospectuses that any Borrower files with the Securities and Exchange Commission or any other Governmental Authority, or any securities exchange; and copies of any press releases or other statements made available by a Borrower to the public concerning material changes to or developments in the business of such Borrower;

(i) promptly after the filing thereof, copies each Schedule SB (Actuarial Information) to the annual report (Form 5500 Series) filed by an Obligor or ERISA Affiliate with the Internal Revenue Service with respect to a Pension Plan; and, upon the reasonable request of any Lender, any other annual governmental report filed in connection with any Plan or Foreign Plan;

(j) such other reports and information (financial or otherwise) as Agent may request from time to time in connection with any Collateral or any Borrower's, Subsidiary's or other Obligor's financial condition or business; and

(k) as soon as available, and in any event within 120 days after the close of each Fiscal Year, financial statements for each Guarantor, in form and substance satisfactory to Agent.

10.1.3 Notices. Notify Agent and Lenders in writing, promptly after a Borrower's obtaining knowledge thereof, of any of the following that affects an Obligor: (a) the threat or commencement of any proceeding or investigation, whether or not covered by insurance, if an adverse determination could have a Material Adverse Effect; (b) any pending or threatened labor dispute, strike or walkout, or the expiration of any material labor contract; (c) any default under or termination of a Material Contract; (d) the existence of any Default or Event of Default; (e) any judgment in an amount exceeding \$1,000,000; (f) the assertion of any Intellectual Property Claim, if an adverse resolution could have a Material Adverse Effect; (g) any violation or asserted violation of any Applicable Law (including ERISA, OSHA, FLSA, or any Environmental Laws), if an adverse resolution could have a Material Adverse Effect; (h) any Environmental Release by an Obligor or on any Property owned, leased or occupied by an Obligor; or receipt of any Environmental Notice; (i) the occurrence of any ERISA Event; (j) the discharge of or any withdrawal or resignation by Borrowers' independent accountants; or (k) any opening of a new office or place of business, at least 30 days prior to such opening.

10.1.4 Landlord and Storage Agreements. Upon request, provide Agent with copies of all existing agreements, and promptly after execution thereof provide Agent with copies of all future agreements, between an Obligor and any landlord, warehouseman, processor, shipper, bailee or other Person that owns any premises at which any Collateral may be kept or that otherwise may possess or handle any Collateral.

10.1.5 Compliance with Laws. Comply with all Applicable Laws, including ERISA, Environmental Laws, FLSA, OSHA, Anti-Terrorism Laws, and laws regarding collection and payment of Taxes, and maintain all Governmental Approvals necessary to the ownership of its Properties or conduct of its business, unless failure to comply (other than failure to comply with Anti-Terrorism Laws) or maintain could not reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, if any Environmental Release occurs at or on any Properties of any Borrower or Subsidiary, it shall act promptly and diligently to investigate and report to Agent and all appropriate Governmental Authorities the extent of, and to make appropriate remedial action to eliminate, such Environmental Release, whether or not directed to do so by any Governmental Authority.

10.1.6 Taxes. Pay and discharge all Taxes prior to the date on which they become delinquent or penalties attach, unless such Taxes are being Properly Contested.

10.1.7 Insurance. In addition to the insurance required hereunder with respect to Collateral, maintain insurance with insurers (with a Best rating of at least A+, unless otherwise approved by Agent in its discretion) satisfactory to Agent, (a) with respect to the Properties and business of Borrowers and Subsidiaries of such type (including product liability, workers' compensation, larceny, embezzlement, errors and omissions, or other criminal misappropriation insurance), in such amounts, and with such coverages and deductibles as are customary for companies similarly situated; and (b) business interruption insurance in an amount not less than \$50,000,000, with deductibles and subject to an endorsement or assignment satisfactory to Agent.

10.1.8 Licenses. Keep each License affecting any Collateral (including the manufacture, distribution or disposition of Inventory) or any other material Property of Borrowers and Subsidiaries in full force and effect; promptly notify Agent of any proposed modification to any such License, or entry into any new License, in each case at least 30 days prior to its effective date; pay all royalties and other amounts when due under any License; and notify Agent of any default or breach asserted by any Person to have occurred under any License.

10.1.9 Future Subsidiaries. Promptly notify Agent upon any Person becoming a Subsidiary and, if such Person is not a Foreign Subsidiary, cause it to guaranty the Obligations in a manner satisfactory to Agent, and to execute and deliver such documents, instruments and agreements and to take such other actions as Agent shall require to evidence and perfect a Lien in favor of Agent on all assets of such Person, including delivery of such legal opinions, in form and substance satisfactory to Agent, as it shall deem appropriate.

10.1.10 Anti-Corruption Laws. Conduct its business in compliance with applicable anti-corruption laws and maintain policies and procedures designed to promote and achieve compliance with such laws.

10.1.11 Dutch Works Councils Act. Each Dutch Obligor shall comply with the requirements of the Dutch Works Councils Act in respect of its execution, delivery and performance of the terms and provisions of each of the Loan Documents to which it is party and the transactions contemplated thereby.

10.1.12 Centre of Main Interests. Each Dutch Obligor shall maintain its “centre of main interests” in the Netherlands for the purposes of the Insolvency Regulation.

10.2 Negative Covenants. As long as any Revolver Commitments or Obligations are outstanding, each Borrower shall not, and shall cause each Subsidiary not to:

10.2.1 Permitted Debt. Create, incur, guarantee or suffer to exist any Debt, except:

- (a) the Obligations;
- (b) Subordinated Debt;
- (c) Permitted Purchase Money Debt;
- (d) Borrowed Money (other than the Obligations, Subordinated Debt and Permitted Purchase Money Debt), but only to the extent outstanding on the U.S. Closing Date with respect to U.S. Borrower and Dutch Closing Date with respect to Dutch Borrower and not satisfied with proceeds of the applicable initial Revolver Loans;
- (e) Debt with respect to Bank Products incurred in the Ordinary Course of Business;
- (f) Debt that is in existence when a Person becomes a Subsidiary or that is secured by an asset when acquired by a Borrower or Subsidiary, as long as such Debt was not incurred in contemplation of such Person becoming a Subsidiary or such acquisition, and does not exceed \$2,000,000 in the aggregate at any time;
- (g) Permitted Contingent Obligations;
- (h) Refinancing Debt as long as each Refinancing Condition is satisfied;
- (i) the Taiwan Debt;
- (j) The Debt on account of Permitted Intercompany Loans; and
- (k) Debt that is not included in any of the preceding clauses of this Section, is not secured by a Lien and does not exceed \$5,000,000 in the aggregate at any time.

10.2.2 Permitted Liens. Create or suffer to exist any Lien upon any of its Property, except the following (collectively, “Permitted Liens”):

- (a) Liens in favor of Agent;
- (b) Purchase Money Liens securing Permitted Purchase Money Debt;
- (c) Liens for Taxes not yet due or being Properly Contested;
- (d) statutory Liens (other than Liens for Taxes or imposed under ERISA or the Code with respect to any Pension Plan or Multiemployer Plan) arising in the Ordinary Course of Business, but only if (i) payment of the obligations secured thereby is not yet due or is being Properly Contested, and (ii) such Liens do not materially impair the value or use of the Property or materially impair operation of the business of any Borrower or Subsidiary;
- (e) Liens incurred or deposits made in the Ordinary Course of Business to secure the performance of government tenders, bids, contracts, statutory obligations and other similar obligations, as long as such Liens are at all times junior to Agent’s Liens and are required or provided by law;
- (f) Liens arising in the Ordinary Course of Business that are subject to Lien Waivers;

(g) Liens arising by virtue of a judgment or judicial order against any Borrower or Subsidiary, or any Property of a Borrower or Subsidiary, as long as such Liens are (i) in existence for less than 20 consecutive days or being Properly Contested, and (ii) at all times junior to Agent's Liens;

(h) easements, rights-of-way, restrictions, covenants or other agreements of record, and other similar charges or encumbrances on Real Estate, that do not secure any monetary obligation and do not interfere with the Ordinary Course of Business;

(i) normal and customary rights of setoff upon deposits in favor of depository institutions, and Liens of a collecting bank on Payment Items in the course of collection;

(j) Liens on assets (other than Accounts and Inventory) acquired in a Permitted Acquisition, securing Debt permitted by **Section 10.2.1(f)**;

(k) All exceptions to title to the Real Estate contained in the title policies issued and approved in writing by Agent covering the Mortgages; and

(l) existing Liens shown on **Schedule 10.2.2**.

10.2.3 Reserved.

10.2.4 Distributions; Upstream Payments. Declare or make any Distributions, except (i) Upstream Payments and (ii) after the Conversion Date, any Distribution so long as the Payment Conditions are satisfied with respect to such Distribution; or create or suffer to exist any encumbrance or restriction on the ability of a Subsidiary to make any Upstream Payment, except for restrictions under the Loan Documents, under Applicable Law or in effect on the U.S. Closing Date as shown on **Schedule 9.1.15**.

10.2.5 Restricted Investments. Make any Restricted Investment.

10.2.6 Disposition of Assets. Make any Asset Disposition, except a Permitted Asset Disposition, a disposition of Equipment under **Section 8.4.2**, or a transfer of Property by a Subsidiary or Obligor to a Borrower.

10.2.7 Loans. Make any loans or other advances of money to any Person, except (a) advances to an officer or employee for salary, travel expenses, commissions and similar items in the Ordinary Course of Business; (b) prepaid expenses and extensions of trade credit made in the Ordinary Course of Business; (c) deposits with financial institutions permitted hereunder; (d) as long as no Default or Event of Default exists, intercompany loans by a U.S. Borrower to another U.S. Borrower and by a Dutch Borrower to another Dutch Borrower and (e) Permitted Intercompany Loans.

10.2.8 Restrictions on Payment of Certain Debt. Make any payments (whether voluntary or mandatory, or a prepayment, redemption, retirement, defeasance or acquisition) with respect to any (a) Subordinated Debt, except regularly scheduled payments of principal, interest and fees, but only to the extent permitted under any subordination agreement relating to such Debt (and a Senior Officer of Borrower Agent shall certify to Agent, not less than five Business Days prior to the date of payment, that all conditions under such agreement have been satisfied); or (b) Borrowed Money (other than the Obligations) prior to its due date under the agreements evidencing such Debt as in effect on the U.S. Closing Date with respect to the U.S. Borrower and the Dutch Closing Date with respect to the Dutch Borrower (or, in each case, as amended thereafter with the consent of Agent); provided that at any time after the Conversion Date, Borrowers may make payments of principal, interest and fees otherwise prohibited above so long as the Payment Conditions are satisfied with respect to such payment.

10.2.9 Fundamental Changes. Change its name or conduct business under any fictitious name; change its tax, charter or other organizational identification number; change its form or state of organization; liquidate, wind up its affairs or dissolve itself; or merge, combine or consolidate with any Person, whether in a single transaction or in a series of related transactions, except for (a) mergers or consolidations of a wholly-owned Subsidiary with another wholly-owned Subsidiary or into a Borrower; or (b) Permitted Acquisitions.

10.2.10 Subsidiaries. Form or acquire any Subsidiary after the U.S. Closing Date, except in accordance with **Sections 10.1.9, 10.2.5 and 10.2.9**; or permit any existing Subsidiary to issue any additional Equity Interests except directors' qualifying shares.

10.2.11 Organic Documents. Amend, modify or otherwise change any of its Organic Documents, except in connection with a transaction permitted under **Section 10.2.9**.

10.2.12 Tax Consolidation. File or consent to the filing of any consolidated income tax return with any Person other than Borrowers and Subsidiaries.

10.2.13 Accounting Changes. Make any material change in accounting treatment or reporting practices, except as required by GAAP and in accordance with **Section 1.2**; or change its Fiscal Year.

10.2.14 Restrictive Agreements. Become a party to any Restrictive Agreement, except a Restrictive Agreement (a) in effect on the U.S. Closing Date with respect to U.S. Borrower and the Dutch Closing Date with respect to Dutch Borrower; (b) relating to secured Debt permitted hereunder, as long as the restrictions apply only to collateral for such Debt; or (c) constituting customary restrictions on assignment in leases and other contracts.

10.2.15 Hedging Agreements. Enter into any Hedging Agreement, except to hedge risks arising in the Ordinary Course of Business and not for speculative purposes.

10.2.16 Conduct of Business. Engage in any business, other than its business as conducted on the U.S. Closing Date and any activities incidental thereto.

10.2.17 Affiliate Transactions. Enter into or be party to any transaction with an Affiliate, except (a) transactions expressly permitted by the Loan Documents; (b) payment of reasonable compensation to officers and employees for services actually rendered, and payment of customary directors' fees and indemnities; (c) transactions solely among Borrowers; (d) transactions with Affiliates consummated prior to the U.S. Closing Date with respect to U.S. Borrower and the Dutch Closing Date with respect to Dutch Borrower, in each case, as shown on **Schedule 10.2.17**; (e) transactions with Affiliates in the Ordinary Course of Business, upon fair and reasonable terms fully disclosed to Agent and no less favorable than would be obtained in a comparable arm's-length transaction with a non-Affiliate; and (f) Permitted Intercompany Loans.

10.2.18 Plans. Become party to any Multiemployer Plan or any Foreign Plan that is substantially similar to a Multiemployer Plan, other than any in existence on the U.S. Closing Date.

10.2.19 Amendments to Subordinated Debt. Amend, supplement or otherwise modify any document, instrument or agreement relating to any Subordinated Debt, if such modification (a) increases the principal balance of such Debt, or increases any required payment of principal or interest; (b) accelerates the date on which any installment of principal or any interest is due, or adds any additional redemption, put or prepayment provisions; (c) shortens the final maturity date or otherwise accelerates amortization; (d) increases the interest rate; (e) increases or adds any fees or charges; (f) modifies any covenant in a manner or adds any representation, covenant or default that is more onerous or restrictive in any material respect for any Borrower or Subsidiary, or that is otherwise materially adverse to any Borrower, any Subsidiary or Lenders; or (g) results in the Obligations not being fully benefited by the subordination provisions thereof.

10.2.20 Advanced Business Computer, Inc. Advanced Business Computer, Inc. shall have no material assets nor material liabilities and shall continue to be a Dormant subsidiary of Borrower.

10.3 Financial Covenants. As long as any Revolver Commitments or Obligations are outstanding, Borrowers shall:

10.3.1 Fixed Charge Coverage Ratio. Maintain a Fixed Charge Coverage Ratio for each 12-month period of at least 1.00 to 1.00 while a Trigger Period is in effect, measured for the most recent period for which financial statements were delivered hereunder prior to the Trigger Period and each period ending thereafter until the Trigger Period is no longer in effect.

SECTION 11. EVENTS OF DEFAULT; REMEDIES ON DEFAULT

11.1 Events of Default. Each of the following shall be an "Event of Default" if it occurs for any reason whatsoever, whether voluntary or involuntary, by operation of law or otherwise:

(a) Any Borrower fails to pay its Obligations when due (whether at stated maturity, on demand, upon acceleration or otherwise);

(b) Any representation, warranty or other written statement of an Obligor made in connection with any Loan Documents or transactions contemplated thereby is incorrect or misleading in any material respect when given;

(c) A Borrower breaches or fail to perform any covenant contained in **Section 6.4, 7.2, 7.3, 7.4, 7.6, 8.1, 8.2.4, 8.2.5, 8.6.2, 10.1.1, 10.1.2, 10.2 or 10.3**;

(d) An Obligor breaches or fails to perform any other covenant contained in any Loan Documents, and such breach or failure is not cured within 15 days after a Senior Officer of such Obligor has knowledge thereof or receives notice thereof from Agent, whichever is sooner; provided, that such notice and opportunity to cure shall not apply if the breach or failure to perform is not capable of being cured within such period or is a willful breach by an Obligor;

(e) A Guarantor repudiates, revokes or attempts to revoke its Guaranty; an Obligor or third party denies or

contests the validity or enforceability of any Loan Documents or Obligations, or the perfection or priority of any Lien granted to Agent; or any Loan Document ceases to be in full force or effect for any reason (other than a waiver or release by Agent and Lenders);

(f) Any breach or default of an Obligor occurs under (i) any Hedging Agreement; or (ii) any instrument or agreement to which it is a party or by which it or any of its Properties is bound, relating to any Debt (other than the Obligations) in excess of \$1,000,000, if the maturity of or any payment with respect to such Debt may be accelerated or demanded due to such breach;

(g) Any judgment or order for the payment of money is entered against an Obligor in an amount that exceeds, individually or cumulatively with all unsatisfied judgments or orders against all Obligors, \$1,000,000 (net of insurance coverage therefor that has not been denied by the insurer), unless a stay of enforcement of such judgment or order is in effect;

(h) A loss, theft, damage or destruction occurs with respect to any Collateral if the amount not covered by insurance exceeds \$1,000,000;

(i) An Obligor is enjoined, restrained or in any way prevented by any Governmental Authority from conducting any material part of its business; an Obligor suffers the loss, revocation or termination of any material license, permit, lease or agreement necessary to its business; there is a cessation of any material part of an Obligor's business for a material period of time; any material Collateral or Property of an Obligor is taken or impaired through condemnation; an Obligor agrees to or commences any liquidation, dissolution or winding up of its affairs; or an Obligor is not Solvent;

(j) An Insolvency Proceeding is commenced by an Obligor; an Obligor makes an offer of settlement, extension or composition to its unsecured creditors generally; a trustee is appointed to take possession of any substantial Property of or to operate any of the business of an Obligor; or an Insolvency Proceeding is commenced against an Obligor and: the Obligor consents to institution of the proceeding, the petition commencing the proceeding is not timely contested by the Obligor, the petition is not dismissed within 30 days after filing, or an order for relief is entered in the proceeding;

(k) The occurrence of (i), (ii), or (iii), which, whether individually or in the aggregate, results in liability in excess of \$10,000,000 imposed on an Obligor (including liabilities imposed on an ERISA Affiliate that are not paid by the ERISA Affiliates), (i) an ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan that has resulted or could reasonably be expected to result in liability of an Obligor to a Pension Plan, Multiemployer Plan or PBGC, or that constitutes grounds for appointment of a trustee for or termination by the PBGC of any Pension Plan or Multiemployer Plan; (ii) an Obligor or ERISA Affiliate fails to pay when due any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan; or (iii) any event similar to the foregoing occurs or exists with respect to a Foreign Plan;

(l) A Dutch Works Councils Act Event occurs;

(m) An Obligor or any of its Senior Officers is criminally indicted or convicted for (i) a felony committed in the conduct of the Obligor's business, or (ii) violating any state or federal law (including the Controlled Substances Act, Money Laundering Control Act of 1986 and Illegal Exportation of War Materials Act) that could lead to forfeiture of any material Property or any Collateral; or

(n) A Change of Control occurs; or any event occurs or condition exists that has a Material Adverse Effect.

11.2 Remedies upon Default. If an Event of Default described in **Section 11.1(j)** occurs with respect to any Borrower, then to the extent permitted by Applicable Law, all Obligations (other than Secured Bank Product Obligations) shall become automatically due and payable and all Revolver Commitments shall terminate, without any action by Agent or notice of any kind. In addition, or if any other Event of Default exists, Agent may in its discretion (and shall upon written direction of Required Lenders) do any one or more of the following from time to time:

(a) declare any Obligations (other than Secured Bank Product Obligations) immediately due and payable, whereupon they shall be due and payable without diligence, presentment, demand, protest or notice of any kind, all of which are hereby waived by Borrowers to the fullest extent permitted by law;

(b) terminate, reduce or condition any Revolver Commitment or adjust the Dutch Borrowing Base or U.S. Borrowing Base;

(c) require Obligors to Cash Collateralize their LC Obligations, Secured Bank Product Obligations and other

Obligations that are contingent or not yet due and payable, and if Obligors fail to deposit such Cash Collateral, Agent may (and shall upon the direction of Required Lenders) advance the required Cash Collateral as Revolver Loans (whether or not an Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied); and

(d) exercise any other rights or remedies afforded under any agreement, by law, at equity or otherwise, including the rights and remedies of a secured party under the UCC. Such rights and remedies include the rights to (i) take possession of any Collateral; (ii) require Borrowers to assemble Collateral, at Borrowers' expense, and make it available to Agent at a place designated by Agent; (iii) enter any premises where Collateral is located and store Collateral on such premises until sold (and if the premises are owned or leased by a Borrower, Borrowers agree not to charge for such storage); and (iv) sell or otherwise dispose of any Collateral in its then condition, or after any further manufacturing or processing thereof, at public or private sale, with such notice as may be required by Applicable Law, in lots or in bulk, at such locations, all as Agent, in its discretion, deems advisable. Each Borrower agrees that 10 days' notice of any proposed sale or other disposition of Collateral by Agent shall be reasonable, and that any sale conducted on the internet or to a licensor of Intellectual Property shall be commercially reasonable. Agent may conduct sales on any Obligor's premises, without charge, and any sale may be adjourned from time to time in accordance with Applicable Law. Agent shall have the right to sell, lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may credit bid and set off the amount of such price against the Obligations.

11.3 License. Agent is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (without payment of royalty or other compensation to any Person) any or all Intellectual Property of Borrowers, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other Property, in advertising for sale, marketing, selling, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral. Each Borrower's rights and interests under Intellectual Property shall inure to Agent's benefit.

11.4 Setoff. At any time during an Event of Default, Agent, Issuing Bank, Lenders, and any of their Affiliates are authorized, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by Agent, Issuing Bank, such Lender or such Affiliate to or for the credit or the account of an Obligor against its Obligations, whether or not Agent, Issuing Bank, such Lender or such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or are owed to a branch or office of Agent, Issuing Bank, such Lender or such Affiliate different from the branch or office holding such deposit or obligated on such indebtedness. The rights of Agent, Issuing Bank, each Lender and each such Affiliate under this Section are in addition to other rights and remedies (including other rights of setoff) that such Person may have.

11.5 Remedies Cumulative; No Waiver.

11.5.1 Cumulative Rights. All agreements, warranties, guaranties, indemnities and other undertakings of Obligors under the Loan Documents are cumulative and not in derogation of each other. The rights and remedies of Agent and Lenders under the Loan Documents are cumulative, may be exercised at any time and from time to time, concurrently or in any order, and are not exclusive of any other rights or remedies available by agreement, by law, at equity or otherwise. All such rights and remedies shall continue in full force and effect until Full Payment of all Obligations.

11.5.2 Waivers. No waiver or course of dealing shall be established by (a) the failure or delay of Agent or any Lender to require strict performance by any Obligor under any Loan Document, or to exercise any rights or remedies with respect to Collateral or otherwise; (b) the making of any Revolver Loan or issuance of any Letter of Credit during a Default, Event of Default or other failure to satisfy any conditions precedent; or (c) acceptance by Agent or any Lender of any payment or performance by an Obligor under any Loan Documents in a manner other than that specified therein. Any failure to satisfy a financial covenant on a measurement date shall not be cured or remedied by satisfaction of such covenant on a subsequent date.

SECTION 12. AGENT

12.1 Appointment, Authority and Duties of Agent.

12.1.1 Appointment and Authority. Each Secured Party appoints and designates Bank of America as Agent under all Loan Documents. Agent may, and each Secured Party authorizes Agent to, enter into all Loan Documents to which Agent is intended to be a party and accept all Security Documents. Any action taken by Agent in accordance with the provisions of the Loan Documents, and the exercise by Agent of any rights or remedies set forth therein, together with all other powers reasonably incidental thereto, shall be authorized by and binding upon all Secured Parties. Without limiting the generality of the foregoing, Agent shall have the sole and exclusive authority to (a) act as the disbursing and collecting agent for Lenders with

respect to all payments and collections arising in connection with the Loan Documents; (b) execute and deliver as Agent each Loan Document, including any intercreditor or subordination agreement, and accept delivery of each Loan Document; (c) act as collateral agent for Secured Parties for purposes of perfecting and administering Liens under the Loan Documents, and for all other purposes stated therein; (d) manage, supervise or otherwise deal with Collateral; and (e) take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral or under any Loan Documents, Applicable Law or otherwise. Agent alone is authorized to determine eligibility and applicable advance rates under the Dutch Borrowing Base or U.S. Borrowing Base, whether to impose or release any reserve, or whether any conditions to funding or issuance of a Letter of Credit have been satisfied, which determinations and judgments, if exercised in good faith, shall exonerate Agent from liability to any Secured Party or other Person for any error in judgment.

12.1.2 Duties. The title of “Agent” is used solely as a matter of market custom and the duties of Agent are administrative in nature only. Agent has no duties except those expressly set forth in the Loan Documents, and in no event does Agent have any agency, fiduciary or implied duty to or relationship with any Secured Party or other Person by reason of any Loan Document or related transaction. The conferral upon Agent of any right shall not imply a duty to exercise such right, unless instructed to do so by Lenders in accordance with this Agreement.

12.1.3 Agent Professionals. Agent may perform its duties through agents and employees. Agent may consult with and employ Agent Professionals, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by an Agent Professional. Agent shall not be responsible for the negligence or misconduct of any agents, employees or Agent Professionals selected by it with reasonable care.

12.1.4 Instructions of Required Lenders. The rights and remedies conferred upon Agent under the Loan Documents may be exercised without the necessity of joining any other party, unless required by Applicable Law. In determining compliance with a condition for any action hereunder, including satisfaction of any condition in **Section 6**, Agent may presume that the condition is satisfactory to a Secured Party unless Agent has received notice to the contrary from such Secured Party before Agent takes the action. Agent may request instructions from Required Lenders or other Secured Parties with respect to any act (including the failure to act) in connection with any Loan Documents or Collateral, and may seek assurances to its satisfaction from Secured Parties of their indemnification obligations against Claims that could be incurred by Agent. Agent may refrain from any act until it has received such instructions or assurances, and shall not incur liability to any Person by reason of so refraining. Instructions of Required Lenders shall be binding upon all Secured Parties, and no Secured Party shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting pursuant to instructions of Required Lenders. Notwithstanding the foregoing, instructions by and consent of specific parties shall be required to the extent provided in **Section 14.1.1**. In no event shall Agent be required to take any action that it determines in its discretion is contrary to Applicable Law or any Loan Documents or could subject any Agent Indemnitee to liability.

12.2 Agreements Regarding Collateral and Borrower Materials.

12.2.1 Lien Releases; Care of Collateral. Secured Parties authorize Agent to release any Lien on any Collateral (a) upon Full Payment of the Obligations; (b) that is the subject of a disposition or Lien that Borrowers certify in writing is a Permitted Asset Disposition or a Permitted Lien entitled to priority over Agent’s Liens (and Agent may rely conclusively on such certificate without further inquiry); (c) that does not constitute a material part of the Collateral; or (d) subject to **Section 14.1**, with the consent of Required Lenders. Secured Parties authorize Agent to subordinate its Liens to any Purchase Money Lien or other Lien entitled to priority hereunder. Agent has no obligation to assure that any Collateral exists or is owned by an Obligor, or is cared for, protected or insured, nor to assure that Agent’s Liens have been properly created, perfected or enforced, or are entitled to any particular priority, nor to exercise any duty of care with respect to any Collateral.

12.2.2 Possession of Collateral. Agent and Secured Parties appoint each Secured Party as agent (for the benefit of Secured Parties) for the purpose of perfecting Liens in Collateral held or controlled by it, to the extent such Liens are perfected by possession or control. If a Secured Party obtains possession or control of any Collateral, it shall notify Agent thereof and, promptly upon Agent’s request, deliver such Collateral to Agent or otherwise deal with it in accordance with Agent’s instructions.

12.2.3 Reports. Agent shall promptly provide to Lenders, when complete, any field examination, audit or appraisal report prepared for Agent with respect to any Obligor or Collateral (“Report”). Reports and other Borrower Materials may be made available to Lenders by providing access to them on the Platform, but Agent shall not be responsible for system failures or access issues that may occur from time to time. Each Lender agrees (a) that Reports are not intended to be comprehensive audits or examinations, and that Agent or any other Person performing an audit or examination will inspect only limited information and will rely significantly upon Borrowers’ books, records and representations; (b) that Agent makes no representation or warranty as to the accuracy or completeness of any Borrower Materials and shall not be liable for any

information contained in or omitted from any Borrower Materials, including any Report; and (c) to keep all Borrower Materials confidential and strictly for such Lender's internal use, not to distribute any Report or other Borrower Materials (or the contents thereof) to any Person (except to such Lender's Participants, attorneys and accountants), and to use all Borrower Materials solely for administration of the Obligations. Each Lender shall indemnify and hold harmless Agent and any other Person preparing a Report from any action such Lender may take as a result of or any conclusion it may draw from any Borrower Materials, as well as from any Claims arising as a direct or indirect result of Agent furnishing same to such Lender, via the Platform or otherwise.

12.3 Reliance By Agent. Agent shall be entitled to rely, and shall be fully protected in relying, upon any certification, notice or other communication (including those by telephone, telex, telegram, telecopy, e-mail or other electronic means) believed by it to be genuine and correct and to have been signed, sent or made by the proper Person. Agent shall have a reasonable and practicable amount of time to act upon any instruction, notice or other communication under any Loan Document, and shall not be liable for any delay in acting.

12.4 Action Upon Default. Agent shall not be deemed to have knowledge of any Default or Event of Default, or of any failure to satisfy any conditions in **Section 6**, unless it has received written notice from a Borrower or Required Lenders specifying the occurrence and nature thereof. If a Lender acquires knowledge of a Default, Event of Default or failure of such conditions, it shall promptly notify Agent and the other Lenders thereof in writing. Each Secured Party agrees that, except as otherwise provided in any Loan Documents or with the written consent of Agent and Required Lenders, it will not take any Enforcement Action, accelerate Obligations (other than Secured Bank Product Obligations) or assert any rights relating to any Collateral.

12.5 Ratable Sharing. If any Lender obtains any payment or reduction of any Obligation, whether through set-off or otherwise, in excess of its ratable share of such Obligation, such Lender shall forthwith purchase from Secured Parties participations in the affected Obligation as are necessary to share the excess payment or reduction on a Pro Rata basis or in accordance with **Section 5.6.2**, as applicable. If any of such payment or reduction is thereafter recovered from the purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest. Notwithstanding the foregoing, if a Defaulting Lender obtains a payment or reduction of any Obligation, it shall immediately turn over the full amount thereof to Agent for application under **Section 4.2.2** and it shall provide a written statement to Agent describing the Obligation affected by such payment or reduction. No Lender shall set off against a Dominion Account without Agent's prior consent.

12.6 Indemnification. EXCEPT FOR LOSSES DIRECTLY AND SOLELY CAUSED BY AGENT INDEMNITEES' AND ISSUING BANK INDEMNITEES' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT THAT IS DETERMINED IN A FINAL, NON-APPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO RESULT FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNITEE, EACH SECURED PARTY SHALL INDEMNIFY AND HOLD HARMLESS AGENT INDEMNITEES AND ISSUING BANK INDEMNITEES, TO THE EXTENT NOT REIMBURSED BY OBLIGORS, ON A PRO RATA BASIS, AGAINST ALL CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY SUCH INDEMNITEE, PROVIDED THAT ANY CLAIM AGAINST AN AGENT INDEMNITEE RELATES TO OR ARISES FROM ITS ACTING AS OR FOR AGENT (IN THE CAPACITY OF AGENT). In Agent's discretion, it may reserve for any Claims made against an Agent Indemnitee or Issuing Bank Indemnitee, and may satisfy any judgment, order or settlement relating thereto, from proceeds of Collateral prior to making any distribution of Collateral proceeds to Secured Parties. If Agent is sued by any receiver, trustee or other Person for any alleged preference or fraudulent transfer, then any monies paid by Agent in settlement or satisfaction of such proceeding, together with all interest, costs and expenses (including attorneys' fees) incurred in the defense of same, shall be promptly reimbursed to Agent by each Secured Party to the extent of its Pro Rata share.

12.7 Limitation on Responsibilities of Agent. Agent shall not be liable to any Secured Party for any action taken or omitted to be taken under the Loan Documents, except for losses directly and solely caused by Agent's gross negligence or willful misconduct. Agent does not assume any responsibility for any failure or delay in performance or any breach by any Obligor, Lender or other Secured Party of any obligations under the Loan Documents. Agent does not make any express or implied representation, warranty or guarantee to Secured Parties with respect to any Obligations, Collateral, Liens, Loan Documents or Obligor. No Agent Indemnitee shall be responsible to Secured Parties for any recitals, statements, information, representations or warranties contained in any Loan Documents or Borrower Materials; the execution, validity, genuineness, effectiveness or enforceability of any Loan Documents; the genuineness, enforceability, collectability, value, sufficiency, location or existence of any Collateral, or the validity, extent, perfection or priority of any Lien therein; the validity, enforceability or collectability of any Obligations; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor or Account Debtor. No Agent Indemnitee shall have any obligation to any Secured Party to ascertain or inquire into the existence of any Default or Event of Default, the observance by any Obligor of any terms of the Loan Documents, or the satisfaction of any conditions precedent contained in any Loan Documents.

12.8 Successor Agent and Co-Agents.

12.8.1 **Resignation; Successor Agent.** Agent may resign at any time by giving at least 30 days written notice thereof to Lenders and Borrowers. Required Lenders may appoint a successor that is (a) a Lender or Affiliate of a Lender; or (b) a financial institution reasonably acceptable to Required Lenders and (provided no Default or Event of Default exists) Borrowers. If no successor is appointed by the effective date of Agent's resignation, then on such date, Agent may appoint a successor acceptable to it in its discretion (which shall be a Lender unless no Lender accepts the role) or, in the absence of such appointment, Required Lenders shall automatically assume all rights and duties of Agent. The successor Agent shall thereupon succeed to and become vested with all the powers and duties of the retiring Agent without further act. The retiring Agent shall be discharged from its duties hereunder on the effective date of its resignation but shall continue to have all rights and protections available to Agent under the Loan Documents with respect to actions, omissions, circumstances or Claims relating to or arising while it was acting or transferring responsibilities as Agent or holding any Collateral on behalf of Secured Parties, including the indemnification set forth in **Sections 12.6** and **14.2**, and all rights and protections under this **Section 12**. Any successor to Bank of America by merger or acquisition of stock or this loan shall continue to be Agent hereunder without further act on the part of any Secured Party or Obligor.

12.8.2 **Co-Collateral Agent.** If appropriate under Applicable Law, Agent may appoint a Person to serve as a co-collateral agent or separate collateral agent under any Loan Document. Each right, remedy and protection intended to be available to Agent under the Loan Documents shall also be vested in such agent. Secured Parties shall execute and deliver any instrument or agreement that Agent may request to effect such appointment. If any such agent shall die, dissolve, become incapable of acting, resign or be removed, then all the rights and remedies of the agent, to the extent permitted by Applicable Law, shall vest in and be exercised by Agent until appointment of a new agent.

12.9 Due Diligence and Non-Reliance. Each Lender acknowledges and agrees that it has, independently and without reliance upon Agent or any other Lenders, and based upon such documents, information and analyses as it has deemed appropriate, made its own credit analysis of each Obligor and its own decision to enter into this Agreement and to fund Revolver Loans and participate in LC Obligations hereunder. Each Secured Party has made such inquiries as it feels necessary concerning the Loan Documents, Collateral and Obligors. Each Secured Party acknowledges and agrees that the other Secured Parties have made no representations or warranties concerning any Obligor, any Collateral or the legality, validity, sufficiency or enforceability of any Loan Documents or Obligations. Each Secured Party will, independently and without reliance upon any other Secured Party, and based upon such financial statements, documents and information as it deems appropriate at the time, continue to make and rely upon its own credit decisions in making Revolver Loans and participating in LC Obligations, and in taking or refraining from any action under any Loan Documents. Except for notices, reports and other information expressly requested by a Lender, Agent shall have no duty or responsibility to provide any Secured Party with any notices, reports or certificates furnished to Agent by any Obligor or any credit or other information concerning the affairs, financial condition, business or Properties of any Obligor (or any of its Affiliates) which may come into possession of Agent or its Affiliates.

12.10 Remittance of Payments and Collections.

12.10.1 **Remittances Generally.** Payments by any Secured Party to Agent shall be made by the time and date provided herein, in immediately available funds. If no time for payment is specified or if payment is due on demand and request for payment is made by Agent by 1:00 p.m. on a Business Day, then payment shall be made by the Secured Party by 3:00 p.m. on such day, and if request is made after 1:00 p.m., then payment shall be made by 11:00 a.m. on the next Business Day. Payment by Agent to any Secured Party shall be made by wire transfer, in the type of funds received by Agent. Any such payment shall be subject to Agent's right of offset for any amounts due from such payee under the Loan Documents.

12.10.2 **Failure to Pay.** If any Secured Party fails to deliver when due any amount payable by it to Agent hereunder, such amount shall bear interest, from the due date until paid in full, at the greater of the Federal Funds Rate or the rate determined by Agent as customary for interbank compensation for two Business Days and thereafter at the Default Rate. In no event shall Borrowers be entitled to credit for any interest paid by a Secured Party to Agent, nor shall a Defaulting Lender be entitled to interest on amounts held by Agent pursuant to **Section 4.2**.

12.10.3 **Recovery of Payments.** If Agent pays an amount to a Secured Party in the expectation that a related payment will be received by Agent from an Obligor and such related payment is not received, then Agent may recover such amount from the Secured Party. If Agent determines that an amount received by it must be returned or paid to an Obligor or other Person pursuant to Applicable Law or otherwise, then Agent shall not be required to distribute such amount to any Secured Party. If Agent is required to return any amounts applied by it to Obligations held by a Secured Party, such Secured Party shall pay to Agent, **on demand**, its share of the amounts required to be returned.

12.11 Individual Capacities. As a Lender, Bank of America shall have the same rights and remedies under the Loan

Documents as any other Lender, and the terms “Lenders,” “Required Lenders” or any similar term shall include Bank of America in its capacity as a Lender. Agent, Lenders and their Affiliates may accept deposits from, lend money to, provide Bank Products to, act as financial or other advisor to, and generally engage in any kind of business with, Obligors and their Affiliates, as if they were not Agent or Lenders hereunder, without any duty to account therefor to any Secured Party. In their individual capacities, Agent, Lenders and their Affiliates may receive information regarding Obligors, their Affiliates and their Account Debtors (including information subject to confidentiality obligations), and shall have no obligation to provide such information to any Secured Party.

12.12 Titles. Each Lender, other than Bank of America, that is designated in connection with this credit facility as an “Arranger,” “Bookrunner” or “Agent” of any kind shall have no right or duty under any Loan Documents other than those applicable to all Lenders, and shall in no event have any fiduciary duty to any Secured Party.

12.13 Bank Product Providers. Each Secured Bank Product Provider, by delivery of a notice to Agent of a Bank Product, agrees to be bound by the Loan Documents, including Sections 5.6, 12, 14.3.3 and 14.16, and agrees to hold harmless Agent Indemnitees, to the extent not reimbursed by Obligors, against all Claims that may be incurred by or asserted against any Agent Indemnitee in connection with such provider’s Secured Bank Product Obligations.

12.14 No Third Party Beneficiaries. This Section 12 is an agreement solely among Secured Parties and Agent, and shall survive Full Payment of the Obligations. This Section 12 does not confer any rights or benefits upon Borrowers or any other Person. As between Borrowers and Agent, any action that Agent may take under any Loan Documents or with respect to any Obligations shall be conclusively presumed to have been authorized and directed by Secured Parties.

12.15 Appointment of Agent as security trustee for U.K. Security Documents. For the purposes of any Liens or Collateral created under each security document executed by any Credit Party and governed by English law in favor of the Agent (the “U.K. Security Documents”), the following additional provisions shall apply, in addition to the provisions set out in Section 12 or otherwise hereunder.

12.15.1 In this Section 12.15, the following expressions shall have the following meanings:

(a) “Appointee” shall mean any receiver, administrator or other insolvency officer appointed in respect of any Obligor or its assets.

(b) “Charged Property” shall mean the assets of the Obligors subject to a security interest under the Dutch U.K. Security Documents.

(c) “Delegate” shall mean any delegate, agent, attorney or co-trustee appointed by the Agent (in its capacity as security trustee).

12.15.2 The Secured Parties appoint the Agent to hold the security interests constituted by the U.K. Security Documents on trust for the Secured Parties on the terms of the Loan Documents and the Agent accepts that appointment.

12.15.3 The Agent, its subsidiaries and associated companies may each retain for its own account and benefit any fee, remuneration and profits paid to it in connection with (i) its activities under the Loan Documents; and (ii) its engagement in any kind of banking or other business with any Obligor.

12.15.4 Nothing in this Agreement constitutes the Agent as a trustee or fiduciary of, nor shall the Agent have any duty or responsibility to, any Obligor.

12.15.5 The Agent shall have no duties or obligations to any other person except for those which are expressly specified in the Loan Documents or mandatorily required by applicable law.

12.15.6 The Agent may appoint one or more Delegates on such terms (which may include the power to sub-delegate) and subject to such conditions as it thinks fit, to exercise and perform all or any of the duties, rights, powers and discretions vested in it by the U.K. Security Documents and shall not be obliged to supervise any Delegate or be responsible to any person for any loss incurred by reason of any act, omission, misconduct or default on the part of any Delegate.

12.15.7 The Agent may (whether for the purpose of complying with any law or regulation of any overseas jurisdiction, or for any other reason) appoint (and subsequently remove) any person to act jointly with the Agent either as a separate trustee or as a co-trustee on such terms and subject to such conditions as the Agent thinks fit and with such of the duties, rights, powers and discretions vested in the Agent by the U.K. Security Documents as may be conferred by the instrument of appointment of that person.

12.15.8 The Agent shall notify the Lenders of the appointment of each Appointee (other than a Delegate).

12.15.9 The Agent may pay reasonable remuneration to any Delegate or Appointee, together with any costs and

expenses (including legal fees) reasonably incurred by the Delegate or Appointee in connection with its appointment. All such remuneration, costs and expenses shall be treated, for the purposes of this Agreement, as paid or incurred by the Agent.

12.15.10 Each Delegate and each Appointee shall have every benefit, right, power and discretion and the benefit of every exculpation (together “Rights”) of the Agent (in its capacity as security trustee) under the U.K. Security Documents, and each reference to the Agent (where the context requires that such reference is to the Agent in its capacity as security trustee) in the provisions of the U.K. Security Documents which confer Rights shall be deemed to include a reference to each Delegate and each Appointee.

12.15.11 Each Secured Party confirms its approval of the U.K. Security Documents and authorizes and instructs the Agent: (i) to execute and deliver the U.K. Security Documents; (ii) to exercise the rights, powers and discretions given to the Agent (in its capacity as security trustee) under or in connection with the U.K. Security Documents together with any other incidental rights, powers and discretions; and (iii) to give any authorizations and confirmations to be given by the Agent (in its capacity as security trustee) on behalf of the Secured Parties under the U.K. Security Documents.

12.15.12 The Agent may accept without inquiry the title (if any) which any person may have to the Charged Property.

12.15.13 Each other Secured Party confirms that it does not wish to be registered as a joint proprietor of any security interest constituted by a U.K. Security Document and accordingly authorizes: (a) the Agent to hold such security interest in its sole name (or in the name of any Delegate) as trustee for the Secured Parties; and (b) the Land Registry (or other relevant registry) to register the Agent (or any Delegate or Appointee) as a sole proprietor of such security interest.

12.15.14 Except to the extent that a U.K. Security Document otherwise requires, any moneys which the Agent receives under or pursuant to a U.K. Security Document may be: (a) invested in any investments which the Agent selects and which are authorized by applicable law; or (b) placed on deposit at any bank or institution (including the Agent) on terms that the Agent thinks fit, in each case in the name or under the control of the Agent, and the Agent shall hold those moneys, together with any accrued income (net of any applicable Tax) to the order of the Lenders, and shall pay them to the Lenders on demand.

12.15.15 On a disposal of any of the Charged Property which is permitted under the Loan Documents, the Agent shall (at the reasonable cost of the Obligors) execute any release of the U.K. Security Documents or other claim over that Charged Property and issue any certificates of non-crystallisation of floating charges that may be required or take any other action that the Agent (acting reasonably) considers desirable.

12.15.16 The Agent shall not be liable for:

- (a) any defect in or failure of the title (if any) which any person may have to any assets over which security is intended to be created by a U.K. Security Document;
- (b) any loss resulting from the investment or deposit at any bank of moneys which it invests or deposits in a manner permitted by a U.K. Security Document;
- (c) the exercise of, or the failure to exercise, any right, power or discretion given to it by or in connection with any Loan Document or any other agreement, arrangement or document entered into, or executed in anticipation of, under or in connection with, any Loan Document; or
- (d) any shortfall which arises on enforcing a U.K. Security Document.

12.15.17 The Agent shall not be obligated to:

- (a) obtain any authorization or environmental permit in respect of any of the Charged Property or a U.K. Security Document;
- (b) hold in its own possession a U.K. Security Document, title deed or other document relating to the Charged Property or a U.K. Security Document;
- (c) perfect, protect, register, make any filing or give any notice in respect of a U.K. Security Document (or the order of ranking of a U.K. Security Document), unless that failure arises directly from its own gross negligence or willful misconduct; or
- (d) require any further assurances in relation to a U.K. Security Document.

12.15.18 In respect of any U.K. Security Document, the Agent shall not be obligated to: (i) insure, or require any other person to insure, the Charged Property; or (ii) make any enquiry or conduct any investigation into the legality, validity,

effectiveness, adequacy or enforceability of any insurance existing over such Charged Property.

12.15.19 In respect of any U.K. Security Document, the Agent shall not have any obligation or duty to any person for any loss suffered as a result of: (i) the lack or inadequacy of any insurance; or (ii) the failure of the Agent to notify the insurers of any material fact relating to the risk assumed by them, or of any other information of any kind, unless Required Lenders have requested it to do so in writing and the Agent has failed to do so within fourteen (14) days after receipt of that request.

12.15.20 Every appointment of a successor Agent under a U.K. Security Document shall be by deed.

12.15.21 Section 1 of the Trustee Act 2000 (UK) shall not apply to the duty of the Agent in relation to the trusts constituted by this Agreement.

12.15.22 In the case of any conflict between the provisions of this Agreement and those of the Trustee Act 1925 (UK) or the Trustee Act 2000 (UK), the provisions of this Agreement shall prevail to the extent allowed by law, and shall constitute a restriction or exclusion for the purposes of the Trustee Act 2000 (UK).

12.15.23 The perpetuity period under the rule against perpetuities if applicable to this Agreement and any U.K. Security Document shall be 80 years from the date of this Agreement.

12.16 Parallel Debt Undertaking.

12.16.1 The parallel debt undertaking created hereunder ("Parallel Debt Undertaking") is constituted in order to secure the prompt and complete satisfaction of any Dutch Obligations. The Parallel Debt Undertaking shall also cover any future extension, prolongation, increase or novation of the Dutch Obligations.

12.16.2 For the purposes of taking and ensuring the continuing validity of Liens under those Security Documents subject to the laws of the Netherlands (the "Parallel Obligations Security Documents") and such other jurisdictions as the Secured Parties and the Obligors (each acting reasonably) agree, notwithstanding any contrary provision in this Agreement:

(a) each Obligor irrevocably and unconditionally agrees and undertakes with the Agent and each Secured Party (other than the Agent) acknowledges that, for the purpose of the granting the Collateral under the Parallel Obligations Security Documents (the "Parallel Obligations Collateral") that each Obligor shall pay to the Agent amounts equal to, and in the currency of, all present and future amounts owing by it to the Secured Parties under the Loan Documents ("Original Obligations") as and when the same fall due for payment under the relevant Loan Documents and in respect of any Obligations (together with the obligation described in paragraph (e) below, the "Parallel Obligations");

(b) each of the Obligors and each Secured Party (other than the Agent) acknowledges that, under the Parallel Obligations Security Documents, the rights of the Agent to demand payment of the Parallel Obligations shall be independent and several from the rights of the other Secured Parties to demand payment of the Original Obligations, provided that the payment by an Obligor of its Parallel Obligations to the Agent in accordance with this Section 12.16 shall also discharge (in the amount and in the currency of the relevant payment) the corresponding Original Obligations and vice versa the payment by an Obligor of all or part of its Original Obligations in accordance with the provisions of the Loan Documents and in respect of the Dutch Obligations shall also discharge (in the amount of the payment) the corresponding Parallel Obligations. The amount of the Parallel Obligations of an Obligor shall at all times be equal to the amount of its Original Obligations;

(c) despite the foregoing, any payment under the Parallel Obligations Security Documents shall be made to the Agent unless expressly stated otherwise in any Parallel Obligations Security Document or unless the Agent directs such payment to be made to a person other than the Agent;

(d) the Agent, the Obligors and each of the other Secured Parties agree that, under the Parallel Obligations Security Documents, the Agent shall be the joint and several creditor (together with the relevant other Secured Party) of each and every obligation of the Obligors towards that other Secured Party under the Loan Documents and in respect of the Dutch Obligations, and that accordingly the Agent will have its own and independent right to demand performance by the Obligors of those obligations in full;

(e) the Parallel Obligations are owed to the Agent in its own name on behalf of itself and not as agent or representative of any other person nor as trustee and the Parallel Debt Security shall secure the Parallel Obligations so owing and its claims in respect of the Parallel Obligations shall not be held on trust. The Parallel Obligations Collateral granted under the Parallel Obligation Security Documents to the Agent to secure the Parallel Obligations is granted to the Agent in its capacity as creditor of the Parallel Obligations and shall not be held on trust;

(f) without limiting or affecting the Agent's right to protect, preserve or enforce its rights under any Parallel Obligations Collateral, the Agent undertakes to each Secured Party not to exercise its rights in respect of the Parallel Obligations without the consent of the relevant Secured Parties. However, for the avoidance of doubt, nothing in the previous sentence shall in any way limit the Agent's right to act in the protection or preservation of rights under any Parallel Obligations Security Documents or to enforce any Parallel Obligations Collateral as contemplated by this Agreement, the relevant Parallel Obligations Security Document or any other Loan Document or in respect of any Dutch Obligations (or to do any act reasonably incidental to the foregoing); and

(g) the Agent shall distribute any amount so received to the Secured Parties in accordance with the terms of this Agreement as if such amounts had been received in respect of the Original Obligations.

12.16.3 Upon complete and irrevocable satisfaction of the Dutch Obligations, the Agent shall as soon as reasonably practical at the cost and expense of the Obligors release the Parallel Debt Undertaking.

SECTION 13. BENEFIT OF AGREEMENT; ASSIGNMENTS

13.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Borrowers, Agent, Lenders, Secured Parties, and their respective successors and assigns, except that (a) no Borrower shall have the right to assign its rights or delegate its obligations under any Loan Documents; and (b) any assignment by a Lender must be made in compliance with **Section 13.3**. Agent may treat the Person which made any Revolver Loan as the owner thereof for all purposes until such Person makes an assignment in accordance with **Section 13.3**. Any authorization or consent of a Lender shall be conclusive and binding on any subsequent transferee or assignee of such Lender.

13.2 Participations.

13.2.1 Permitted Participants; Effect. Subject to **Section 13.3.3**, any Lender may sell to a financial institution ("Participant") a participating interest in the rights and obligations of such Lender under any Loan Documents. Despite any sale by a Lender of participating interests to a Participant, such Lender's obligations under the Loan Documents shall remain unchanged, it shall remain solely responsible to the other parties hereto for performance of such obligations, it shall remain the holder of its Revolver Loans and Revolver Commitments for all purposes, all amounts payable by Borrowers shall be determined as if it had not sold such participating interests, and Borrowers and Agent shall continue to deal solely and directly with such Lender in connection with the Loan Documents. Each Lender shall be solely responsible for notifying its Participants of any matters under the Loan Documents, and Agent and the other Lenders shall not have any obligation or liability to any such Participant. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of **Section 5.9** unless Borrowers agree otherwise in writing.

13.2.2 Voting Rights. Each Lender shall retain the sole right to approve, without the consent of any Participant, any amendment, waiver or other modification of a Loan Document other than that which forgives principal, interest or fees, reduces the stated interest rate or fees payable with respect to any Revolver Loan or Revolver Commitment in which such Participant has an interest, postpones the Commitment Termination Date or any date fixed for any regularly scheduled payment of principal, interest or fees on such Revolver Loan or Revolver Commitment, or releases any Borrower, Guarantor or substantially all Collateral.

13.2.3 Participant Register. Each Lender that sells a participation shall, acting as a non-fiduciary agent of Borrowers (solely for tax purposes), maintain a register in which it enters the Participant's name, address and interest in Revolver Commitments, Revolver Loans (and stated interest) and LC Obligations. Entries in the register shall be conclusive, absent manifest error, and such Lender shall treat each Person recorded in the register as the owner of the participation for all purposes, notwithstanding any notice to the contrary. No Lender shall have an obligation to disclose any information in such register except to the extent necessary to establish that a Participant's interest is in registered form under the Code or U.S. Treasury Regulations, including under Section 5f.103-1(c) of the U.S. Treasury Regulations.

13.2.4 Benefit of Setoff. Each Participant shall have a right of set-off in respect of its participating interest to the same extent as if such interest were owing directly to a Lender, and each Lender shall also retain the right of set-off with respect to any participating interests sold by it. By exercising any right of set-off, a Participant agrees to share with Lenders all amounts received through its set-off, in accordance with **Section 12.5** as if such Participant were a Lender.

13.3 Assignments.

13.3.1 Permitted Assignments. A Lender may assign to an Eligible Assignee any of its rights and obligations under the Loan Documents, as long as (a) each assignment is of a constant, and not a varying, percentage of the transferor Lender's rights and obligations under the Loan Documents and, in the case of a partial assignment, is in a minimum principal amount of

\$10,000,000 (unless otherwise agreed by Agent in its discretion) and integral multiples of \$5,000,000 in excess of that amount; (b) except in the case of an assignment in whole of a Lender's rights and obligations, the aggregate amount of the Revolver Commitments retained by the transferor Lender is at least \$10,000,000 (unless otherwise agreed by Agent in its discretion); (c) the parties to each such assignment shall execute and deliver an Assignment to Agent for acceptance and recording; and (d) the Eligible Assignee is a Non-Public Lender. Nothing herein shall limit the right of a Lender to pledge or assign any rights under the Loan Documents to secure obligations of such Lender, including a pledge or assignment to a Federal Reserve Bank or any central bank; provided, that no such pledge or assignment shall release the Lender from its obligations hereunder nor substitute the pledge or assignee for such Lender as a party hereto.

13.3.2 Effect; Effective Date. Upon delivery to Agent of an assignment notice in the form of **Exhibit B** and a processing fee of \$3,500 (unless otherwise agreed by Agent in its discretion), the assignment shall become effective as specified in the notice, if it complies with this **Section 13.3**. From such effective date, the Eligible Assignee shall for all purposes be a Lender under the Loan Documents, and shall have all rights and obligations of a Lender thereunder. Upon consummation of an assignment, the transferor Lender, Agent and Borrowers shall make appropriate arrangements for issuance of replacement and/or new notes, if applicable. The transferee Lender shall comply with **Section 5.10** and deliver, upon request, an administrative questionnaire satisfactory to Agent.

13.3.3 Certain Assignees. No assignment or participation may be made to a Borrower, Affiliate of a Borrower, Defaulting Lender or natural person. Agent shall have no obligation to determine whether any assignment is permitted under the Loan Documents. Any assignment by a Defaulting Lender must be accompanied by satisfaction of its outstanding obligations under the Loan Documents in a manner satisfactory to Agent, including payment by the Defaulting Lender or Eligible Assignee of an amount sufficient upon distribution (through direct payment, purchases of participations or other methods acceptable to Agent in its discretion) to satisfy all funding and payment liabilities of the Defaulting Lender. If any assignment by a Defaulting Lender (by operation of law or otherwise) does not comply with the foregoing, the assignee shall be deemed a Defaulting Lender for all purposes until compliance occurs.

13.3.4 Register. Agent, acting as a non-fiduciary agent of Borrowers (solely for tax purposes), shall maintain (a) a copy (or electronic equivalent) of each Assignment and Acceptance delivered to it, and (b) a register for recordation of the names, addresses and Revolver Commitments of, and the Revolver Loans, interest and LC Obligations owing to, each Lender or Issuing Bank, as the case may be. Entries in the register shall be conclusive, absent manifest error, and Borrowers, Agent, Lenders and Issuing Bank shall treat each Person recorded in such register as a Lender or Issuing Bank, as the case may be, for all purposes under the Loan Documents, notwithstanding any notice to the contrary. Agent may choose to show only one Borrower as the borrower in the register, without any effect on the liability of any Obligor with respect to the Obligations. The register shall be available for inspection by Borrowers or any Lender, from time to time upon reasonable notice.

13.4 Replacement of Certain Lenders. If a Lender (a) within the last 120 days failed to give its consent to any amendment, waiver or action for which consent of all Lenders was required and Required Lenders consented, (b) is a Defaulting Lender, or (c) within the last 120 days gave a notice under **Section 3.5** or requested payment or compensation under **Section 3.7** or **5.9** (and has not designated a different Lending Office pursuant to **Section 3.8**), then Agent or Borrower Agent may, upon 10 days' notice to such Lender, require it to assign its rights and obligations under the Loan Documents to Eligible Assignee(s), pursuant to appropriate Assignment(s), within 20 days after the notice. Agent is irrevocably appointed as attorney-in-fact to execute any such Assignment if the Lender fails to execute it. Such Lender shall be entitled to receive, in cash, concurrently with such assignment, all amounts owed to it under the Loan Documents through the date of assignment.

13.5 Disqualified Institutions.

13.5.1 So long as no Event of Default exists under **Section 11.1(a)** or **11.1(j)**, no assignment or participation shall be made to any Person that was a Disqualified Institution as of the date (the "Trade Date") on which the assigning Lender entered into a binding agreement to sell and assign all or a portion of its rights and obligations under this Agreement to such Person (unless Borrowers have consented to such assignment in writing in its sole and absolute discretion, in which case such Person will not be considered a Disqualified Institution for the purpose of such assignment or participation). For the avoidance of doubt, with respect to any assignee that becomes a Disqualified Institution after the applicable Trade Date (including as a result of the delivery of a notice pursuant to, and/or the expiration of the notice period referred to in, the definition of "Disqualified Institution"), (x) such assignee shall not retroactively be disqualified from becoming a Lender and (y) the execution by Borrowers of an Assignment with respect to such assignee will not by itself result in such assignee no longer being considered a Disqualified Institution. Any assignment in violation of this **Section 13.5.1** shall not be void, but the other provisions of this **Section 13.5** shall apply.

13.5.2 If any assignment or participation is made to any Disqualified Institution without Borrowers' prior written

consent in violation of **Section 13.5.1** above, Borrowers may, at their sole expense and effort, upon notice to the applicable Disqualified Institution and Agent, (A) terminate the Revolver Commitments of such Disqualified Institution and repay all obligations of Borrower owing to such Disqualified Institution in connection with such Revolver Commitments and/or (B) require such Disqualified Institution to assign, without recourse (in accordance with and subject to the restrictions contained in this **Section 13**), all of its interest, rights and obligations under this Agreement to one or more Eligible Assignees at the lowest of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder.

13.5.3 Notwithstanding anything to the contrary contained in this Agreement, Disqualified Institutions (A) will not (x) have the right to receive information, reports or other materials provided to Lenders by Borrowers, Agent or any other Lender, (y) attend or participate in meetings attended by Lenders and Agent, or (z) access any electronic site established for Lenders or confidential communications from counsel to or financial advisors of Agent or Lenders and (B) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Institution will be deemed to have consented in the same proportion as Lenders that are not Disqualified Institutions consented to such matter, and (y) for purposes of voting in any Insolvency Proceeding, each Disqualified Institution party hereto hereby agrees (1) not to vote in any such Insolvency Proceeding, (2) if such Disqualified Institution does vote in such Insolvency Proceeding notwithstanding the restriction in the foregoing clause (c), such vote will be deemed not to be in good faith and shall be “designated” pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other debtor relief laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected a debtor relief plan in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other debtor relief laws) and (3) not to contest any request by any party for a determination by the Bankruptcy Court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

13.5.4 Agent shall have the right, and Borrowers hereby expressly authorizes Agent, to (A) post the list of Disqualified Institutions provided by Borrowers and any updates thereto from time to time (collectively, the “DQ List”) on the Platform, including that portion of the Platform that is designated for “public side” Lenders and/or (B) provide the DQ List to each Lender requesting the same.

SECTION 14. MISCELLANEOUS

14.1 Consents, Amendments and Waivers.

14.1.1 Amendment. No modification of any Loan Document, including any extension or amendment of a Loan Document or any waiver of a Default or Event of Default, shall be effective without the prior written agreement of Agent (with the consent of Required Lenders) and each Obligor party to such Loan Document; provided, that

(a) without the prior written consent of Agent, no modification shall alter any provision in a Loan Document that relates to any rights, duties or discretion of Agent;

(b) without the prior written consent of Issuing Bank, no modification shall alter **Section 2.3** or any other provision in a Loan Document that relates to Letters of Credit or any rights, duties or discretion of Issuing Bank;

(c) without the prior written consent of each affected Lender, including a Defaulting Lender, no modification shall (i) increase the Revolver Commitment of such Lender; (ii) reduce the amount of, or waive or delay payment of, any principal, interest or fees payable to such Lender (except as provided in **Section 4.2**); (iii) extend the Revolver Termination Date applicable to such Lender’s Obligations; or (iv) amend this clause (c);

(d) without the prior written consent of each Lender (except any Defaulting Lender), no modification shall (i) alter **Section 5.6.2, 5.6.3, 7.1** (except to add Collateral) or **14.1.1**; (ii) amend the definition of Pro Rata or Required Lenders; (iii) release all or substantially all of the Collateral; or (iv) except in connection with a merger, disposition or similar transaction expressly permitted hereby, release any Obligor from liability for any Obligations;

(e) without the prior written consent of Supermajority Lenders (except any Defaulting Lender), no modification shall amend the definition of Dutch Borrowing Base, U.S. Borrowing Base, Global Borrowing Base, Dutch Accounts Formula Amount, U.S. Accounts Formula Amount, Dutch Inventory Formula Amount or U.S. Inventory Formula Amount (or any defined term used in such definitions) if the effect of such amendment is to increase borrowing availability;

(f) without the prior written consent of a Secured Bank Product Provider, no modification shall affect its

relative payment priority under **Section 5.6.2**; and

(g) if Real Estate secures any Obligations, no modification of a Loan Document shall add, increase, renew or extend any credit line hereunder until the completion of flood diligence and documentation as required by all Flood Laws or as otherwise satisfactory to all Lenders.

14.1.2 Limitations. The agreement of Borrowers shall not be required for any modification of a Loan Document that deals solely with the rights and duties of Lenders, Agent and/or Issuing Bank as among themselves. Only the consent of the parties to any agreement relating to fees or a Bank Product shall be required for modification of such agreement, and no Bank Product provider (in such capacity) shall have any right to consent to modification of any Loan Document other than its Bank Product agreement. Any waiver or consent granted by Agent or Lenders hereunder shall be effective only if in writing and only for the matter specified.

14.1.3 Payment for Consents. No Borrower will, directly or indirectly, pay any remuneration or other thing of value, whether by way of additional interest, fee or otherwise, to any Lender (in its capacity as a Lender hereunder) as consideration for agreement by such Lender with any modification of any Loan Documents, unless such remuneration or value is concurrently paid, on the same terms, on a Pro Rata basis to all Lenders providing their consent.

14.2 Indemnity. EACH BORROWER SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AGAINST ANY CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE, INCLUDING CLAIMS ASSERTED BY ANY OBLIGOR OR OTHER PERSON OR ARISING FROM THE NEGLIGENCE OF AN INDEMNITEE. In no event shall any party to a Loan Document have any obligation thereunder to indemnify or hold harmless an Indemnitee with respect to a Claim that is determined in a final, non-appealable judgment by a court of competent jurisdiction to result from the gross negligence or willful misconduct of such Indemnitee.

14.3 Notices and Communications.

14.3.1 Notice Address. Subject to **Section 14.3.2**, all notices and other communications by or to a party hereto shall be in writing and shall be given to any Borrower, at Borrower Agent's address shown on the signature pages hereof, and to any other Person at its address shown on the signature pages hereof (or, in the case of a Person who becomes a U.S. Lender after the U.S. Closing Date or a Dutch Lender after the Dutch Closing Date, at the address shown on its Assignment), or at such other address as a party may hereafter specify by notice in accordance with this **Section 14.3**. Each communication shall be effective only (a) if given by facsimile transmission, when transmitted to the applicable facsimile number, if confirmation of receipt is received; (b) if given by mail, three Business Days after deposit in the U.S. mail, with first-class postage pre-paid, addressed to the applicable address; or (c) if given by personal delivery, when duly delivered to the notice address with receipt acknowledged. Notwithstanding the foregoing, no notice to Agent pursuant to **Section 2.1.5, 2.3, 3.1.2, 4.1.1 or 5.3.3** shall be effective until actually received by the individual to whose attention at Agent such notice is required to be sent. Any written communication that is not sent in conformity with the foregoing provisions shall nevertheless be effective on the date actually received by the noticed party. Any notice received by Borrower Agent shall be deemed received by all Borrowers.

14.3.2 Communications. Electronic and telephonic communications (including e-mail, messaging, voice mail and websites) may be used only in a manner acceptable to Agent. Secured Parties make no assurance as to the privacy or security of electronic or telephonic communications. E-mail and voice mail shall not be effective notices under the Loan Documents.

14.3.3 Platform. Borrower Materials shall be delivered pursuant to procedures approved by Agent, including electronic delivery (if possible) upon request by Agent to an electronic system maintained by Agent ("Platform"). Borrowers shall notify Agent of each posting of Borrower Materials on the Platform and the materials shall be deemed received by Agent only upon its receipt of such notice. Borrower Materials and other information relating to this credit facility may be made available to Secured Parties on the Platform. The Platform is provided "as is" and "as available." Agent does not warrant the accuracy or completeness of any information on the Platform nor the adequacy or functioning of the Platform, and expressly disclaims liability for any errors or omissions in the Borrower Materials or any issues involving the Platform. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY AGENT WITH RESPECT TO BORROWER MATERIALS OR THE PLATFORM. No Agent Indemnitee shall have any liability to Borrowers, Secured Parties or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) relating to use by any Person of the Platform, including any unintended recipient, nor for delivery of Borrower Materials and other information via the Platform, internet, e-mail, or any other electronic platform or messaging system.

14.3.4 Public Information. Obligors and Secured Parties acknowledge that "public" information may not be

segregated from material non-public information on the Platform. Secured Parties acknowledge that Borrower Materials may include Obligors' material non-public information, and should not be made available to personnel who do not wish to receive such information or may be engaged in investment or other market-related activities with respect to an Obligor's securities. Borrowers and Secured Parties acknowledge and agree that the DQ List shall be deemed suitable for posting and may be posted by Agent on the Platform.

14.3.5 Non-Conforming Communications. Agent and Lenders may rely upon any communications purportedly given by or on behalf of any Borrower even if they were not made in a manner specified herein, were incomplete or were not confirmed, or if the terms thereof, as understood by the recipient, varied from a later confirmation. Each Borrower shall indemnify and hold harmless each Indemnitee from any liabilities, losses, costs and expenses arising from any electronic or telephonic communication purportedly given by or on behalf of a Borrower.

14.4 Performance of Borrowers' Obligations. Agent may, in its discretion at any time and from time to time, at Borrowers' expense, pay any amount or do any act required of a Borrower under any Loan Documents or otherwise lawfully requested by Agent to (a) enforce any Loan Documents or collect any Obligations; (b) protect, insure, maintain or realize upon any Collateral; or (c) defend or maintain the validity or priority of Agent's Liens in any Collateral, including any payment of a judgment, insurance premium, warehouse charge, finishing or processing charge, or landlord claim, or any discharge of a Lien. All payments, costs and expenses (including Extraordinary Expenses) of Agent under this Section shall be reimbursed to Agent by Borrowers, **on demand**, with interest from the date incurred until paid in full, at the Default Rate. Any payment made or action taken by Agent under this Section shall be without prejudice to any right to assert an Event of Default or to exercise any other rights or remedies under the Loan Documents.

14.5 Credit Inquiries. Agent and Lenders may (but shall have no obligation) to respond to usual and customary credit inquiries from third parties concerning any Obligor or Subsidiary.

14.6 Severability. Wherever possible, each provision of the Loan Documents shall be interpreted in such manner as to be valid under Applicable Law. If any provision is found to be invalid under Applicable Law, it shall be ineffective only to the extent of such invalidity and the remaining provisions of the Loan Documents shall remain in full force and effect.

14.7 Cumulative Effect; Conflict of Terms. The provisions of the Loan Documents are cumulative. The parties acknowledge that the Loan Documents may use several limitations or measurements to regulate similar matters, and they agree that these are cumulative and that each must be performed as provided. Except as otherwise provided in another Loan Document (by specific reference to the applicable provision of this Agreement), if any provision contained herein is in direct conflict with any provision in another Loan Document, the provision herein shall govern and control.

14.8 Counterparts; Execution. Any Loan Document may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement shall become effective when Agent has received counterparts bearing the signatures of all parties hereto. Agent may (but shall have no obligation to) accept any signature, contract formation or record-keeping through electronic means, which shall have the same legal validity and enforceability as manual or paper-based methods, to the fullest extent permitted by Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any similar state law based on the Uniform Electronic Transactions Act. Upon request by Agent, any electronic signature or delivery shall be promptly followed by a manually executed or paper document.

14.9 Entire Agreement. Time is of the essence with respect to all Loan Documents and Obligations. The Loan Documents constitute the entire agreement, and supersede all prior understandings and agreements, among the parties relating to the subject matter thereof.

14.10 Relationship with Lenders. The obligations of each Lender hereunder are several, and no Lender shall be responsible for the obligations or Revolver Commitments of any other Lender. Amounts payable hereunder to each Lender shall be a separate and independent debt. It shall not be necessary for Agent or any other Lender to be joined as an additional party in any proceeding for such purposes. Nothing in this Agreement and no action of Agent, Lenders or any other Secured Party pursuant to the Loan Documents or otherwise shall be deemed to constitute Agent and any Secured Party to be a partnership, joint venture or similar arrangement, nor to constitute control of any Obligor.

14.11 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated by any Loan Document, Borrowers acknowledge and agree that (a)(i) this credit facility and any arranging or other services by Agent, any Lender, any of their Affiliates or any arranger are arm's-length commercial transactions between Borrowers and their Affiliates, on one hand, and Agent, any Lender, any of their Affiliates or any arranger, on the other hand; (ii) Borrowers have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate; and (iii) Borrowers are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated by the Loan Documents; (b) each of Agent,

Lenders, their Affiliates and any arranger is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for Borrowers, their Affiliates or any other Person, and has no obligation with respect to the transactions contemplated by the Loan Documents except as expressly set forth therein; and (c) Agent, Lenders, their Affiliates and any arranger may be engaged in a broad range of transactions that involve interests that differ from those of Borrowers and their Affiliates, and have no obligation to disclose any of such interests to Borrowers or their Affiliates. To the fullest extent permitted by Applicable Law, each Borrower hereby waives and releases any claims that it may have against Agent, Lenders, their Affiliates and any arranger with respect to any breach of agency or fiduciary duty in connection with any transaction contemplated by a Loan Document.

14.12 Confidentiality. Each of Agent, Lenders and Issuing Bank shall maintain the confidentiality of all Information (as defined below), except that Information may be disclosed (a) to its Affiliates, and to its and their partners, directors, officers, employees, agents, auditors, advisors and representatives (provided they are informed of the confidential nature of the Information and instructed to keep it confidential); (b) to the extent requested by any governmental, regulatory or self-regulatory authority purporting to have jurisdiction over it or its Affiliates; (c) to the extent required by Applicable Law or by any subpoena or other legal process; (d) to any other party hereto; (e) in connection with any action or proceeding relating to any Loan Documents or Obligations; (f) subject to an agreement containing provisions substantially the same as this Section, to any Transferee or any actual or prospective party (or its advisors) to any Bank Product or to any swap, derivative or other transaction under which payments are to be made by reference to an Obligor or Obligor's obligations (it being understood that the DQ List may be disclosed to any assignee or Participant, or prospective assignee or Participant, in reliance on this clause (f)); (g) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) is available to Agent, any Lender, Issuing Bank or any of their Affiliates on a nonconfidential basis from a source other than Borrowers; (h) on a confidential basis to a provider of a Platform; or (i) with the consent of Borrower Agent. Notwithstanding the foregoing, Agent and Lenders may publish or disseminate general information concerning this credit facility for league table, tombstone and advertising purposes, and may use Borrowers' logos, trademarks or product photographs in advertising materials. As used herein, "Information" means information received from an Obligor or Subsidiary relating to it or its business that is identified as confidential when delivered. A Person required to maintain the confidentiality of Information pursuant to this Section shall be deemed to have complied if it exercises a degree of care similar to that accorded its own confidential information. Each of Agent, Lenders and Issuing Bank acknowledges that (i) Information may include material non-public information; (ii) it has developed compliance procedures regarding the use of such information; and (iii) it will handle the material non-public information in accordance with Applicable Law.

14.13 Reserved.

14.14 Reserved.

14.15 GOVERNING LAW. UNLESS EXPRESSLY PROVIDED IN ANY LOAN DOCUMENT, THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND ALL CLAIMS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES EXCEPT FEDERAL LAWS RELATING TO NATIONAL BANKS.

14.16 Consent to Forum; Bail-In of EEA Financial Institutions.

14.16.1 Forum. EACH BORROWER HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE COURT SITTING IN THE BOROUGH OF MANHATTAN OR THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, IN ANY DISPUTE, ACTION, LITIGATION OR OTHER PROCEEDING RELATING IN ANY WAY TO ANY LOAN DOCUMENTS, AND AGREES THAT ANY DISPUTE, ACTION, LITIGATION OR OTHER PROCEEDING SHALL BE BROUGHT BY IT SOLELY IN ANY SUCH COURT. EACH BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL CLAIMS, OBJECTIONS AND DEFENSES THAT IT MAY HAVE REGARDING ANY SUCH COURT'S PERSONAL OR SUBJECT MATTER JURISDICTION, VENUE OR INCONVENIENT FORUM. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 14.3.1. A final judgment in any proceeding of any such court shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or any other manner provided by Applicable Law.

14.16.2 Other Jurisdictions. Nothing herein shall limit the right of Agent or any Lender to bring proceedings against any Obligor in any other court, nor limit the right of any party to serve process in any other manner permitted by Applicable Law. Nothing in this Agreement shall be deemed to preclude enforcement by Agent of any judgment or order obtained in any forum or jurisdiction.

14.16.3 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the

contrary in any Loan Document or in any other agreement, arrangement or understanding among the parties, each party hereto (including each Secured Party) acknowledges that, with respect to any Secured Party that is an EEA Financial Institution, any unsecured liability of such Secured Party arising under a Loan Document may be subject to the write-down and conversion powers of an EEA Resolution Authority, and each party hereto agrees and consents to, and acknowledges and agrees to be bound by, (a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liability which may be payable to it by such Secured Party; and (b) the effects of any Bail-in Action on any such liability, including (i) a reduction in full or in part or cancellation of any such liability; (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent, or a bridge institution that may be issued to the party or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under any Loan Document; or (iii) the variation of the terms of such liability in connection with the exercise of any Write-Down and Conversion Powers.

14.17 Waivers by Borrowers. To the fullest extent permitted by Applicable Law, each Borrower waives (a) the right to trial by jury (which Agent, Issuing Bank, Lenders and all other Secured Parties hereby also waive) in any proceeding or dispute of any kind relating in any way to any Loan Documents, Obligations or Collateral; (b) presentment, demand, protest, notice of presentment, default, non-payment, maturity, release, compromise, settlement, extension or renewal of any commercial paper, accounts, documents, instruments, chattel paper and guaranties at any time held by Agent on which a Borrower may in any way be liable, and hereby ratifies anything Agent may do in this regard; (c) notice prior to taking possession or control of any Collateral; (d) any bond or security that might be required by a court prior to allowing Agent to exercise any rights or remedies; (e) the benefit of all valuation, appraisal and exemption laws; (f) any claim against an Indemnitee, on any theory of liability, for special, indirect, consequential, exemplary or punitive damages (as opposed to direct or actual damages) in any way relating to any Enforcement Action, Obligations, Loan Documents or transactions relating thereto; and (g) notice of acceptance hereof. Each Borrower acknowledges that the foregoing waivers are a material inducement to Agent, Issuing Bank and Lenders entering into this Agreement and that they are relying upon the foregoing in their dealings with Borrowers. Each Borrower has reviewed the foregoing waivers with its legal counsel and has knowingly and voluntarily waived its jury trial and other rights following consultation with legal counsel. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

14.18 Patriot Act Notice. Agent and Lenders hereby notify Borrowers that pursuant to the Patriot Act, Agent and Lenders are required to obtain, verify and record information that identifies each Borrower, including its legal name, address, tax ID number and other information that will allow Agent and Lenders to identify it in accordance with the Patriot Act. Agent and Lenders will also require information regarding any personal guarantor and may require information regarding Borrowers' management and owners, such as legal name, address, social security number and date of birth. Borrowers shall, promptly upon request, provide all documentation and other information as Agent, Issuing Bank or any Lender may request from time to time in order to comply with any obligations under any "know your customer," anti-money laundering or other requirements of Applicable Law.

14.19 NO ORAL AGREEMENT. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS BETWEEN THE PARTIES. THERE ARE NO UNWRITTEN AGREEMENTS BETWEEN THE PARTIES.

[Remainder of page intentionally left blank; signatures begin on following page]

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date set forth above.

U.S. BORROWERS:

SUPER MICRO COMPUTER, INC.,
a Delaware corporation

By : /s/CHARLES LIANG

Name: Charles Liang

Title: President and CEO

Address:

980 Rock Avenue

San Jose, CA 95131

Attn: Kevin Bauer

Telecopy: (408) 503-8022

AGENT AND LENDERS:

BANK OF AMERICA, N.A.,
as Agent and Lender

By: /s/CATHERINE T. NGO
Name: Catherine T. Ngo
Title: Senior Vice President

Address:

Bank of America, N.A.
333 S. Hope Street
Suite 1900
Los Angeles, CA 90071
Attn: Portfolio Manager - SMCI

LOAN AND SECURITY AGREEMENT

(SMCI)

SIGNATURE PAGE

ING CAPITAL LLC,
as a Lender

By /s/STEVEN G. FLEENOR

Name: Steven G. Fleenor

Title: Managing Director

By: /s/JEFFREY CHU

Name: Jeffrey Chu

Title: Vice President

Address:

ING Capital LLC
333 South Grand Avenue, Suite 1600
Los Angeles, CA 90071
Attn: Jeffrey Chu

LOAN AND SECURITY AGREEMENT

(SMCI)

SIGNATURE PAGE

EAST WEST BANK,
as a Lender

By: /s/NIMA RASSOUL
Name: Nima Rassouli
Title: Vice President

Address:
135 N. Los Robles Ave. 6th Fl.
Pasadena, CA 91101

Attn: Maurice Yu
Telecopy: 626-817-8863

LOAN AND SECURITY AGREEMENT

(SMCI)

SIGNATURE PAGE

MB FINANCIAL BANK, N.A.,
as a Lender

By: /s/TERESA B GERLACH

Name: Teresa B Gerlach
Title: Senior Vice President

Address:

MB Financial Bank, N.A.
6111 N. River Road, 3rd Floor
Rosemont IL 60018
Attn: Brian Roman

LOAN AND SECURITY AGREEMENT

(SMCI)

SIGNATURE PAGE

CTBC BANK CORP. (USA),
as a Lender

By: /s/MINGDAO LI

Name: Mingdao Li
Title: SVP & Regional Head

Address:

19620 Stevens Creek Blvd.,
Suite 160
Cupertino, CA 95014
Attn: Michael Lee
Telecopy: Michael.lee@ctcbankusa.com

LOAN AND SECURITY AGREEMENT

(SMCI)

SIGNATURE PAGE

EXHIBIT A
to
Loan and Security Agreement

ASSIGNMENT AND ACCEPTANCE

Reference is made to the Loan and Security Agreement dated as of April 19, 2018, as amended (“Loan Agreement”), among **SUPER MICRO COMPUTER, INC.**, a Delaware corporation (“SMCI”, together with any other party joined hereto after the U.S. Closing Date as a “U.S. Borrower”, individually, each a “U.S. Borrower” and collectively, the “U.S. Borrowers”), upon the Dutch Closing Date, **SUPER MICRO COMPUTER B.V.**, a private limited liability company formed under the laws of the Netherlands and registered with the Trade Register of the Dutch Chamber of Commerce under number 17102792 (“SMCIBV”, together with any other party joined hereto after the Dutch Closing Date as a “Dutch Borrower”, individually, each a “Dutch Borrower” and collectively, the “Dutch Borrowers”, and together with U.S. Borrowers, individually, a “Borrower” and, collectively, the “Borrowers”), **BANK OF AMERICA, N.A.**, as agent (“Agent”) for the financial institutions from time to time party to the Loan Agreement (“Lenders”), and such Lenders. Terms are used herein as defined in the Loan Agreement.

_____ (“Assignor”) and _____
 (“Assignee”) agree as follows:

1. Assignor hereby assigns to Assignee and Assignee hereby purchases and assumes from Assignor (a) a principal amount of \$ _____ of Assignor’s outstanding Revolver Loans and \$ _____ of Assignor’s participations in LC Obligations, and (b) the amount of \$ _____ of Assignor’s Revolver Commitment (which represents ____% of the total Revolver Commitments) (the foregoing items being, collectively, “Assigned Interest”), together with an interest in the Loan Documents corresponding to the Assigned Interest. This Agreement shall be effective as of the date (“Effective Date”) indicated in the corresponding Assignment Notice delivered to Agent, provided such Assignment Notice is executed by Assignor, Assignee, Agent and Borrower Agent, if applicable. From and after the Effective Date, Assignee hereby expressly assumes, and undertakes to perform, all of Assignor’s obligations in respect of the Assigned Interest, and all principal, interest, fees and other amounts which would otherwise be payable to or for Assignor’s account in respect of the Assigned Interest shall be payable to or for Assignee’s account, to the extent such amounts accrue on or after the Effective Date.

2. Assignor (a) represents that as of the date hereof, prior to giving effect to this assignment, its Revolver Commitment is \$ _____, and the outstanding balance of its Revolver Loans and participations in LC Obligations is \$ _____; (b) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Loan Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Agreement or any other instrument or document

furnished pursuant thereto, other than that Assignor is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim; and (c) makes no representation or warranty and assumes no responsibility with respect to the financial condition of Borrowers or the performance by Borrowers of their obligations under the Loan Documents. *[Assignor is attaching the promissory note[s] held by it and requests that Agent exchange such note[s] for new promissory notes payable to Assignee [and Assignor].]*

3. Assignee (a) represents and warrants that it is legally authorized to enter into this Assignment; (b) confirms that it has received copies of the Loan Agreement and such other Loan Documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment; (c) agrees that it shall, independently and without reliance upon Assignor and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents; (d) confirms that it is an Eligible Assignee; (e) appoints and authorizes Agent to take such action as agent on its behalf and to exercise such powers under the Loan Agreement as are delegated to Agent by the terms thereof, together with such powers as are incidental thereto; (f) agrees that it will observe and perform all obligations that are required to be performed by it as a "Lender" under the Loan Documents; and (g) represents and warrants that the assignment evidenced hereby will not result in a non-exempt "prohibited transaction" under Section 406 of ERISA.

4. This Agreement shall be governed by the laws of the State of _____. If any provision is found to be invalid under Applicable Law, it shall be ineffective only to the extent of such invalidity and the remaining provisions of this Agreement shall remain in full force and effect.

5. Each notice or other communication hereunder shall be in writing, shall be sent by messenger, by telecopy or facsimile transmission, or by first-class mail, shall be deemed given when sent and shall be sent as follows:

(a) If to Assignee, to the following address (or to such other address as Assignee may designate from time to time):

(b) If to Assignor, to the following address (or to such other address as Assignor may designate from time to time):

Payments hereunder shall be made by wire transfer of immediately available Dollars as follows:

If to Assignee, to the following account (or to such other account as Assignee may designate from time to time):

ABA No. _____

Account No. _____
Reference: _____

If to Assignor, to the following account (or to such other account as Assignor may designate from time to time):

ABA No. _____

Account No. _____
Reference: _____

IN WITNESS WHEREOF, this Assignment and Acceptance is executed as of _____.

("Assignee")

By _____
Title:

("Assignor")

By _____
Title:

EXHIBIT B
to
Loan and Security Agreement

ASSIGNMENT NOTICE

Reference is made to (1) the Loan and Security Agreement dated as of April 19, 2018, as amended (“Loan Agreement”), among **SUPER MICRO COMPUTER, INC.**, a Delaware corporation (“SMCI”, together with any other party joined hereto after the U.S. Closing Date as a “U.S. Borrower”, individually, each a “U.S. Borrower” and collectively, the “U.S. Borrowers”), upon the Dutch Closing Date, **SUPER MICRO COMPUTER B.V.**, a private limited liability company formed under the laws of the Netherlands and registered with the Trade Register of the Dutch Chamber of Commerce under number 17102792 (“SMCI BV”, together with any other party joined hereto after the Dutch Closing Date as a “Dutch Borrower”, individually, each a “Dutch Borrower” and collectively, the “Dutch Borrowers”, and together with U.S. Borrowers, individually, a “Borrower” and, collectively, the “Borrowers”), **BANK OF AMERICA, N.A.**, as agent (“Agent”) for the financial institutions from time to time party to the Loan Agreement (“Lenders”), and such Lenders. Terms are used herein as defined in the Loan Agreement.

Assignor hereby notifies Borrowers and Agent of Assignor’s intent to assign to Assignee pursuant to the Assignment (a) a principal amount of \$ _____ of Assignor’s outstanding Revolver Loans and \$ _____ of Assignor’s participations in LC Obligations, and (b) the amount of \$ _____ of Assignor’s Revolver Commitment (which represents ____% of the total Revolver Commitments) (the foregoing items being, collectively, the “Assigned Interest”), together with an interest in the Loan Documents corresponding to the Assigned Interest. This Agreement shall be effective as of the date (“Effective Date”) indicated below, provided this Assignment Notice is executed by Assignor, Assignee, Agent and Borrower Agent, if applicable. Pursuant to the Assignment, Assignee has expressly assumed all of Assignor’s obligations under the Loan Agreement to the extent of the Assigned Interest, as of the Effective Date.

For purposes of the Loan Agreement, Agent shall deem Assignor’s Revolver Commitment to be reduced by \$ _____, and Assignee’s Revolver Commitment to be increased by \$ _____.

The address of Assignee to which notices and information are to be sent under the terms of the Loan Agreement is:

The address of Assignee to which payments are to be sent under the terms of the Loan Agreement is shown in the Assignment.

This Notice is being delivered to Borrowers and Agent pursuant to **Section 13.3** of the Loan Agreement. Please acknowledge your acceptance of this Notice by executing and returning to Assignee and Assignor a copy of this Notice.

IN WITNESS WHEREOF, this Assignment Notice is executed as of _____.

("Assignee")

By _____
Title:

("Assignor")

By _____
Title:

ACKNOWLEDGED AND AGREED,
AS OF THE DATE SET FORTH ABOVE:

BORROWER AGENT.*

By _____
Title:

* No signature required if Assignee is a Lender, Affiliate of a Lender or Approved Fund, or if an Event of Default exists.

BANK OF AMERICA, N.A.,
as Agent

By _____
Title:

SCHEDULE 1.1
to
Loan and Security Agreement

REVOLVER COMMITMENTS OF LENDERS

Prior to the Conversion Date:

<u>Lender</u>	<u>U.S. Revolver Commitment</u>	<u>Total Revolver Commitments</u>
Bank of America, N.A.	\$100,000,000	\$100,000,000
ING Capital LLC	\$60,000,000	\$60,000,000
East West Bank	\$35,000,000	\$35,000,000
MB Financial Bank, N.A.	\$30,000,000	\$30,000,000
CTBC Bank Corp. (USA)	\$25,000,000	\$25,000,000
TOTAL:	\$250,000,000	\$250,000,000

Upon the occurrence of the Conversion Date, as set forth in a written notification delivered by Agent to Borrower Agent

SCHEDULE 7.3
to
Loan and Security Agreement

REAL ESTATE

- 1) 980 Rock Avenue, San Jose, CA, 95131
 - 2) 988 and 998 Rock Avenue, San Jose, CA, 95131
 - 3) 871 Fox Lane, San Jose, CA, 95131
 - 4) 880 Fox Lane, San Jose, CA, 95131
 - 5) 801 and 821 Fox Lane, San Jose, 95131
 - 6) 1797, 1781 and 1785 Fox Drive, San Jose, CA, 95131
 - 8) 750 Ridder Park Drive, San Jose, CA, 95131
 - 9) 782 Ridder Park Dr. San Jose, CA, 95131
 - 10) 708 Ridder Park, San Jose, CA 95190
-

SCHEDULE 8.5
to
Loan and Security Agreement

DEPOSIT ACCOUNTS

<u>Depository Bank</u>	<u>Type of Account</u>	<u>Account Number</u>
Bank of America	Checking	118631-9219
Bank of America	Cafeteria	118670-8068
Bank of America	Payroll	118600-3088
Bank of America	Operating	118655-1898
Bank of America	LA Lockbox	118697-3218
Bank of America	Money Market	118632-8266
Bank of America	Controlled Disbursement Account	335988-2027
Cathay Bank	Checking	1200-1086
Cathay Bank	Money Market	1200-4820
CTBC Bank	Checking	1660-3818
Morgan Stanley/Citigroup	Basic Securities Account	164-153797-684
Merrill Lynch	Portfolio Account	74A-07P17
Merrill Lynch	Option Exercised	233-07148
UBS Financial Services	Basic Securities Account	CP14601
Restricted Cash-BOA	Custodian-Worker Comp	602792.1
Restricted Cash-BOA	Custodian-Worker Comp	8R9-02919
Restricted Cash-CTBC	Standby LC 3246300000-CD	5680075731
ABN AMRO Bank-USD	USD	NL69ABNA0412381044
ABN AMRO Bank-EUR	EUR	NL84ABNA0412313456
ABN AMRO Bank-GBP	GBP	NL36ABNA0418926034
CTBC Bank	OBU Account	901141015299
ING Bank	USD	NL14INGB0021096880
ING Bank	EUR	NL67INGB0673778371
Bank of America-USD	OBU Account	609103951043
Bank of America-JPY	OBU Account	609103951051
ING Bank	Business Savings Account (deposit account for bank guarantee)	NL89INGB6037278709

SCHEDULE 8.6.1
to
Loan and Security Agreement

BUSINESS LOCATIONS

1. Each Borrower currently has the following business locations:

Chief Executive Office of SMCI: 980 Rock Ave.,
San Jose, CA 95131

Chief Executive Office of SMCI BV: Het Sterrenbeeld 28, 5215 ML,
's-Hertogenbosch, The Netherlands

Other Locations of SMCI: 525 Washington Blvd, 20th Floor
Jersey City, NJ 07310

Other Locations of SMCI BV: 195 Wardour Street
London, W1F 8ZG

2. Each Subsidiary currently has the following business locations:

Chief Executive Office of Super Micro Computer Taiwan: 3F., No. 150, Jian 1st Rd., Zhonghe Dist.
New Taipei City 235, Taiwan (R.O.C.)

Chief Executive Office of Super Micro Asia Science & Technology Park, Inc.: No. 1899, Xingfeng Rd., Bade Dist.,
Taoyuan City 334, Taiwan (R.O.C.)

Chief Executive Office of Supermicro KK: S-7F N.E.S Buldg., 22-14,
Sakuragaoka-cho, Shibuya-Ku,
Tokyo, 150-0031 Japan

Chief Executive Office of Supermicro Technology (Beijing) Co., LTD: Suite 1208 JiaHua Building D
Shangdi, Haidian District,
Beijing, China 100085

Other Location of Supermicro Technology (Beijing) Co., LTD: Room 1604, No. 398, North Caoxi Rd.,
HuiZhi Building
Xuhui District, Shanghai China 200030

Location of Super Micro Computer Limited (UK) and Super Micro Limited (UK): 195 Wardour Street
London, W1F 8ZG

3. In the five years preceding the U.S. Closing Date, Borrowers and Subsidiaries have had the following business locations in addition to those set forth above:

None.

4. The following bailees, warehouseman, similar parties and consignees hold inventory of a Borrower or Subsidiary:

None.

SCHEDULE 9.1.4
to
Loan and Security Agreement

NAMES AND CAPITAL STRUCTURE

1. The corporate names, jurisdictions of incorporation, authorized and issued Equity Interests, and holders of Equity Interests of each Borrower and Subsidiary are as follows:

<u>Name</u>	<u>Jurisdiction</u>	<u>Ownership</u>	<u>Total Authorized Shares</u>	<u>Total Issued Shares</u>
Super Micro Computer, Inc.	Delaware (U.S.)	Publically owned	100,000,000	53,107,000
Super Micro Computer B.V.	The Netherlands	Wholly owned by Super Micro Computer Holdings C.V.	1,840,000	1,840,000
Super Micro Computer, LLC	Delaware (U.S.)	Wholly Owned by Super Micro Computer, Inc.	N/A	N/A
Super Micro Computer, Inc. Taiwan	Taiwan	Wholly Owned by Super Micro Computer, Inc.	30,000,000	30,000,000
Super Micro Asia Science and Technology Park, Inc.	Taiwan	50% owned by Super Micro Computer, Inc. Taiwan and 50% owned by Ablecom	1,000,000	1,000,000
Super Micro Computer Holdings C.V.	The Netherlands	99% owned by Super Micro Computer, Inc. and 1% owned by Super Micro Computer, LLC	N/A	N/A
Super Micro Computer International, Inc.	Cayman Islands	Wholly owned by Super Micro Computer Holdings C.V.	1,000	1,000
Supermicro Technology (Beijing) Co., Ltd.	China	Wholly owned by Super Micro Computer International, Inc.	N/A	N/A
Supermicro KK	Japan	Wholly owned by Super Micro Computer International, Inc.	9,500	9,500
Super Micro Computer Limited (UK)	England and Wales	Wholly owned Super Micro Computer B.V.	1	1
Super Micro Limited (UK)	England and Wales	Wholly owned Super Micro Computer B.V.	1	1

2. All agreements binding on holders of Equity Interests of Borrowers and Subsidiaries with respect to such interests are as follows:

None.

3. In the five years preceding the U.S. Closing Date, no Borrower or Subsidiary has acquired any substantial assets from any other Person nor been the surviving entity in a merger or combination, except:

None.

SCHEDULE 9.1.15
to
Loan and Security Agreement

REAL PROPERTY IN A SPECIAL FLOOD HAZARD ZONE

None.

SCHEDULE 9.1.11
to
Loan and Security Agreement

PATENTS, TRADEMARKS, COPYRIGHTS AND LICENSES

1. Borrowers' and Subsidiaries' patents:

<u>Patent Title</u>	<u>Owner</u>	<u>Status in Patent Office</u>	<u>Federal Registration No.</u>	<u>Grant Date</u>
Handle structure and server using the same	Super Micro Computer, Inc.	Active	US9,725,933B2	8/8/2017
Server Chassis	Super Micro Computer, Inc.	Active	US9,699,931B1	7/4/2017
Converter	Super Micro Computer, Inc.	Active	US9,652,000B1	5/16/2017
Tool-less storage device adaptor tray with spring mechanism	Super Micro Computer, Inc.	Active	US9,648,775	5/9/2017
Data storage expanding apparatus	Super Micro Computer, Inc.	Active	US9,626,326B2	4/18/2017
Top-load HDD server	Super Micro Computer, Inc.	Active	US9,625,959B1	4/18/2017
Method and system for powering multiple computer platforms in symmetric configuration	Super Micro Computer, Inc.	Active	US9,583,918	2/28/2017
Expandable server case	Super Micro Computer, Inc.	Active	US9,572,275B2	2/14/2017
Surrounding-buckle type mobile hard drive rack	Super Micro Computer, Inc.	Active	US9,497,879B2	11/15/2016
Server chassis capable of accessing and rotating storage devices accommodated therein	Super Micro Computer, Inc.	Active	US9,468,127B2	10/11/2016
Surrounding-buckle type mobile hard drive rack	Super Micro Computer, Inc.	Active	US9,392,719B1	7/12/2016
Fixing member of rack server	Super Micro Computer, Inc.	Active	US9,363,921B1	6/7/2016
Loading mechanism of storage device	Super Micro Computer, Inc.	Active	US9,360,902B1	6/7/2016
Storage device backplane with penetrating convection and computer framework	Super Micro Computer, Inc.	Active	US9,317,078B2	4/19/2016


<u>Patent Title</u>	<u>Owner</u>	<u>Status in Patent Office</u>	<u>Federal Registration No.</u>	<u>Grant Date</u>
Server device and data storage device replacement mechanism thereof	Super Micro Computer, Inc.	Active	US9,245,587B2	1/26/2016
Backplane structure and server system utilizing the same	Super Micro Computer, Inc.	Active	US9,167,725B2	10/20/2015
Data storage connecting device	Super Micro Computer, Inc.	Active	US9,166,316B2	10/20/2015
Server with openings on two lateral sides	Super Micro Computer, Inc.	Active	US9,119,315B2	8/25/2015
Server structure with swappable tray	Super Micro Computer, Inc.	Active	US8,922,987B2	12/30/2014
Two-layer wind-guiding shroud	Super Micro Computer, Inc.	Active	US8,747,064B2	6/10/2014
Screw less fixing assembly for interface card	Super Micro Computer, Inc.	Active	US8,315,059B2	11/20/2012
Heat-dissipating assembly for server	Super Micro Computer, Inc.	Active	US8,089,763B2	1/3/2012
Server module	Super Micro Computer, Inc.	Active	US7,894,208B1	2/22/2011
Disposing structure for hot swappable motherboard in industrial computer chassis	Super Micro Computer, Inc.	Active	US7,894,195B2	2/22/2011
Industrial computer chassis structure with power source disposed centrally	Super Micro Computer, Inc.	Active	US7,839,624B2	11/23/2010
Modular case assembly device	Super Micro Computer, Inc.	Active	US7,735,669B2	6/15/2010
Assembly device for a computer case and outer cover	Super Micro Computer, Inc.	Active	US7,706,145B2	4/27/2010
Control device of connection studs of a computer	Super Micro Computer, Inc.	Active	US7,643,273B2	1/5/2010
Control device used for a computer casing on which a plurality of expansion cards is inserted	Super Micro Computer, Inc.	Active	US7,639,507B2	12/29/2009
Fan device for a computer host	Super Micro Computer, Inc.	Active	US7,618,309B2	11/17/2009

<u>Patent Title</u>	<u>Owner</u>	<u>Status in Patent Office</u>	<u>Federal Registration No.</u>	<u>Grant Date</u>
Synchronized rectifier filter control device for protecting a power supply from reverse current	Super Micro Computer, Inc.	Active	US7,586,764B2	9/8/2009
Clasp device for a handle of a power supply	Super Micro Computer, Inc.	Active	US7,586,748B2	9/8/2009
Assembly device for power supplies	Super Micro Computer, Inc.	Active	US7,567,437B2	7/28/2009
Partitioning device for holding slots of a host computer case	Super Micro Computer, Inc.	Active	US7,558,074B2	7/7/2009
Anomaly control device for a dual fan of computer	Super Micro Computer, Inc.	Active	US7,558,035B2	7/7/2009
Computer housing shock absorber device for a vibration source frame	Super Micro Computer, Inc.	Active	US7,545,641B2	6/9/2009
Device for assembling transversal PCI expansion cards and a computer housing	Super Micro Computer, Inc.	Active	US7,525,815B2	4/28/2009
Server wherein an interior of which is connected with five expansion boards	Super Micro Computer, Inc.	Active	US7,499,289B2	3/3/2009
Control device used for a computer motherboard on which a plurality of interface cards is inserted	Super Micro Computer, Inc.	Active	US7,499,285B2	3/3/2009
Vibration absorption device for a fan	Super Micro Computer, Inc.	Active	US7,488,152B2	2/10/2009
Handle device for a modularized casing	Super Micro Computer, Inc.	Active	US7,480,963B2	1/27/2009
Block-shape container which can be assembled into and disassembled from a computer casing	Super Micro Computer, Inc.	Active	US7,469,978B2	12/30/2008
Assembly of modularized housing and door cover	Super Micro Computer, Inc.	Active	US7,432,441	10/7/2008
Air shroud installed on a circuit board	Super Micro Computer, Inc.	Active	US7,423,872B2	9/9/2008
Power supply early warning device for pulling out a power plug	Super Micro Computer, Inc.	Active	US7,414,860B1	8/19/2008

<u>Patent Title</u>	<u>Owner</u>	<u>Status in Patent Office</u>	<u>Federal Registration No.</u>	<u>Grant Date</u>
Cooling fan device for a computer	Super Micro Computer, Inc.	Active	US7,411,788B2	8/12/2008
Positioning device for fixing an interface card on a computer casing without using screws	Super Micro Computer, Inc.	Active	US7,402,072B1	7/22/2008
Computer casing baffle plate device	Super Micro Computer, Inc.	Active	US7,355,115B2	4/8/2008
Fastening positioning device for a handle of a power supply	Super Micro Computer, Inc.	Active	US7,354,293B2	8/4/2008
Circuit card locking device at a rear cover of a computer	Super Micro Computer, Inc.	Active	US7,335,045B1	2/26/2008
Air shroud for dissipating heat from an electronic component	Super Micro Computer, Inc.	Active	US7,310,228B2	12/18/2007
Modularized redundant heat sink for dissipating heat generated from chips	Super Micro Computer, Inc.	Active	US7,310,226B2	12/18/2007
Displacement control device for an extractable power supply	Super Micro Computer, Inc.	Active	US7,278,867B1	10/9/2007
Removable computer host housing assembly	Super Micro Computer, Inc.	Active	US7,214,088B1	5/8/2007
Retention device used in a circuit card of a computer	Super Micro Computer, Inc.	Active	US7,203,076B1	4/10/2007
Engaging device of a handle for a modularized casing	Super Micro Computer, Inc.	Active	US7,168,772B1	1/30/2007
Modular case handle positioning device	Super Micro Computer, Inc.	Active	US7,125,272B1	10/24/2006
Circuit board securing device for computer case	Super Micro Computer, Inc.	Active	US7,102,894B1	9/5/2006
Method and architecture for monitoring the health of servers across data networks	Super Micro Computer, Inc.	Active	US6,738,811B1	5/18/2004

2. Borrowers' and Subsidiaries' trademarks:

<u>Trademark</u>	<u>Owner</u>	<u>Status in Trademark Office</u>	<u>Federal Registration No.</u>	<u>Registration Date</u>
SUPER ●	Super Micro Computer, Inc.	Active	1,998,213	9/3/1996
SUPERMICR ●	Super Micro Computer, Inc.	Active	2,073,134	6/24/1997
BUILDING BLOCK SOLUTIONS	Super Micro Computer, Inc.	Active	2,300,797	12/14/1999
SERVER BUILDING BLOCK SOLUTION	Super Micro Computer, Inc.	Active	2,391,923	10/3/2000
SUPERMICR ●	Super Micro Computer, Inc.	Active	2,742,848	7/29/2003
SUPERBOARD	Super Micro Computer, Inc.	Active	2,891,872	10/5/2004
SUPERDOCTOR	Super Micro Computer, Inc.	Active	3,098,843	5/30/2006
A+ MOTHERBOARD	Super Micro Computer, Inc.	Active	3,184,757	12/12/2006
SUPERBLADE	Super Micro Computer, Inc.	Active	3,327,287	10/30/2007
SUPERMICRO	Super Micro Computer, Inc.	Active	3,384,839	2/19/2008
SUPERO	Super Micro Computer, Inc.	Active	3,384,841	2/19/2008
PERSONALBLADE	Super Micro Computer, Inc.	Active	3,581,031	2/24/2009
OFFICEBLADE	Super Micro Computer, Inc.	Active	3,581,032	2/24/2009
DATACENTERBLADE	Super Micro Computer, Inc.	Active	3,600,531	3/31/2009
WE KEEP IT GREEN	Super Micro Computer, Inc.	Active	3,750,433	2/16/2010
2U TWIN2	Super Micro Computer, Inc.	Active	3,788,239	5/11/2010
TWINBLADE	Super Micro Computer, Inc.	Active	3,862,733	10/19/2010
SUPERSERVER	Super Micro Computer, Inc.	Active	3,902,574	1/11/2011
DOUBLE-SIDED STORAGE	Super Micro Computer, Inc.	Active	3,912,514	1/25/2011
SUPERRACK	Super Micro Computer, Inc.	Active	3,921,290	2/15/2011
X-BLADE	Super Micro Computer, Inc.	Active	4,206,179	9/11/2012

<u>Trademark</u>	<u>Owner</u>	<u>Status in Trademark Office</u>	<u>Federal Registration No.</u>	<u>Registration Date</u>
BBP	Super Micro Computer, Inc.	Active	4,306,629	3/19/2013
FATTWIN (block letters)	Super Micro Computer, Inc.	Active	4,310,264	3/26/2013
TWINPRO2	Super Micro Computer, Inc.	Active	4,720,973	4/14/2015
TWINPRO	Super Micro Computer, Inc.	Active	4,720,974	4/14/2015
(New 2013 Logo) 	Super Micro Computer, Inc.	Active	4,840,535	10/27/2015
SUPERSTORAGE	Super Micro Computer, Inc.	Active	4,943,468	4/19/2016
SMCI	Super Micro Computer, Inc.	Active	4,983,375	6/21/2016
FAT TWIN (block letters)	Super Micro Computer, Inc.	Active	4,993,641	7/5/2016
MICROBLADE	Super Micro Computer, Inc.	Active	5,191,290	4/25/2017
BIGTWIN	Super Micro Computer, Inc.	Active	5,200,188	5/9/2017

3. Borrowers' and Subsidiaries' copyrights:

None.

4. Borrowers' and Subsidiaries' licenses (other than routine business licenses, authorizing them to transact business in local jurisdictions):

Initial Platform Contribution Transaction Agreement dated as of May 1, 2016 (copy already provided to Agent)

Technology License Agreement dated as of October 27, 2016 by and between Super Micro Computer, B.V. and FiberHome Telecommunication Technologies Co., Ltd. (copy already provided to Agent)

SCHEDULE 9.1.14
to
Loan and Security Agreement

ENVIRONMENTAL MATTERS

None, other than matters previously disclosed to Agent in writing prior to the U.S. Closing Date and Dutch Closing Date concerning 750 Ridder Park, San Jose, CA 95131 and in connection with that certain Credit Agreement dated as of June 30, 2016 by and among Super Micro Computer, Inc., Super Micro Computer B.V., and Bank of America, N.A., among others.

SCHEDULE 9.1.15
to
Loan and Security Agreement

RESTRICTIVE AGREEMENTS

None.

SCHEDULE 9.1.16
to
Loan and Security Agreement

LITIGATION

1. Proceedings and investigations pending against Borrowers or Subsidiaries:

Shareholder Lawsuits

On September 4, 2015, *Deason v. Super Micro Computer, Inc.*, No. 5:15-cv-04049 EJD, a securities class action, was filed against the Company, its Chief Executive Officer, Charles Liang, and its former Chief Financial Officer, Howard Hideshima in the U.S. District Court for the Northern District of California. The court dismissed an earlier version of the operative complaint with leave to amend. The operative Second Amended Complaint alleges that defendants violated the securities laws by issuing false certifications of internal controls over financial reporting, and false financial statements for the Company's fiscal First Quarter 2016. Plaintiff seeks damages on behalf of an alleged class of investors who purchased the Company's common stock between September 15, 2014 and November 16, 2015. Defendants filed a motion to dismiss the Second Amended Complaint, which is pending.

On December 18, 2015, *City Of Pontiac General Employees' Retirement System v. Liu*, No. 5:15-cv-04049 EJD, a purported shareholder derivative action, was filed in the U.S. District Court for the Northern District of California. The complaint sues current and former officers and current and former members of the Board of Directors, and seeks damages purportedly on behalf of the Company based on allegations similar to those alleged in the *Deason* securities class action litigation described above. The parties have agreed to stay the case pending certain further developments in the *Deason* securities class action.

On February 8, 2018, two complaints were filed against the Company, its Chief Executive Officer, Charles Liang, and its former Chief Financial Officer, Howard Hideshima, in the U.S. District Court for the Northern District of California. The lawsuits are captioned *Hessefort v. Super Micro Computer, Inc., et al.*, No. 18-cv-00838, and *United Union of Roofers v. Super Micro Computer, Inc., et al.*, No. 18-cv-00850. The complaints contain similar allegations, claiming that the defendants violated Section 10(b) of the Securities Exchange Act due to alleged material misstatements and/or omissions in the Company's public statements regarding recognition of revenue. No defendants have appeared in either lawsuit to date.

SEC Investigation

On August 31, 2015, the Company filed a Form 12b-25 relating to the filing of its Annual Report on Form 10-K for the fiscal year ended June 30, 2015. The Form 12b-25 disclosed that the Company's Form 10-K filing was delayed as the Company investigated irregularities regarding certain cooperative marketing expenses (the "Marketing Expense Matter"). The Company

completed the investigation, and the Company timely filed its Form 10-K within the extension period. No changes to the Company's previously announced financial results were required in that filing. The Securities and Exchange Commission ("SEC") commenced an investigation of the Marketing Expense Matter, and a formal order of investigation issued on October 25, 2016 pursuant to which the SEC has obtained documents and taken testimony of a number of individuals. The Company has cooperated with the investigation, which is ongoing.

As disclosed in the Company's Form 12b-25 filed on August 29, 2017 and its Form 8-K filed on September 14, 2017, the Company was unable to file its 2017 Form 10-K within the prescribed time period because the Company had not yet completed its financial statements. As the Company has previously publicly announced, in connection with the in-process audit of the Company's financial results for the year ended June 30, 2017, a sales transaction was subject to additional inquiry and review (the "Revenue Recognition Matter"). The transaction in question, representing approximately \$8.8 million in revenue, was originally recorded as revenue during the quarter ended December 31, 2016. However, prior to review by the Company's independent registered public accounting firm and prior to the Company's public announcement of its results for the quarter, the Company reversed this recognition and the revenue was recognized in the following quarter ended March 31, 2017. Acting under the authority of its investigation of the Marketing Expense Matter, the SEC has expanded its investigation to include the Revenue Recognition Matter. The Company has produced documents relating to the Revenue Recognition Matter and is continuing to cooperate with the SEC investigation.

2. Threatened proceedings or investigations of which any Borrower or Subsidiary is aware:

None.

3. Pending Commercial Tort Claim(s) of any Obligor:

None.

SCHEDULE 9.1.20
to
Loan and Security Agreement

LABOR CONTRACTS

Borrowers and Subsidiaries are party to the following collective bargaining agreements, management agreements and consulting agreements:

None.

SCHEDULE 10.2.2
to
Loan and Security Agreement

EXISTING LIENS

Debtor: SUPER MICRO COMPUTER, INC. Jurisdiction: DELAWARE SECRETARY OF STATE						
Secured Party:	File Number:	Date Filed:	Lapse Date:	Subsequent Filings:	Collateral:	Status:
Bank of America, N.A.	2010 2131468	06/18/2010	06/18/2020	Amendment filed 10/03/11; Continuation filed 01/13/15	Blanket	Active
Dell Financial Services L.L.C.	2011 3486688	09/12/2011	09/12/2021	Continuation filed 08/15/16	Leased equipment	Active
Wells Fargo Bank, N.A.	2013 2966944	07/31/2013	07/31/2018		Specific equipment	Active
Wells Fargo Bank, N.A.	2013 4476900	11/13/2013	11/13/2018		Specific equipment	Active
Wells Fargo Bank, N.A.	2014 0966051	03/12/2014	03/12/2019		Specific equipment	Active
Wells Fargo Bank, N.A.	2014 1725233	05/02/2014	05/02/2019		Specific equipment	Active
Nissan Motor Acceptance Corporation	2014 1827468	05/08/2014	05/08/2019		Specific equipment	Active
Wells Fargo Bank, N.A.	2014 1856392	05/12/2014	05/12/2019		Specific equipment	Active
Wells Fargo Bank, N.A.	2014 2159135	06/03/2014	06/03/2019		Specific equipment (filed as fixture filing with real estate legal description of real property on Exhibit A)	Active
Wells Fargo Bank, N.A.	2014 2987113	07/28/2014	07/28/2019		Specific equipment	Active
Wells Fargo Bank, N.A.	2014 3087640	08/01/2014	08/01/2019		Specific equipment	Active
Wells Fargo Bank, N.A.	2014 3338654	08/20/2014	08/20/2019		Specific equipment	Active
Wells Fargo Bank, N.A.	2014 3410115	08/25/2014	08/25/2019		Specific equipment	Active
Wells Fargo Bank, N.A.	2014 4141164	10/15/2014	10/15/2019		Specific equipment	Active
Wells Fargo Bank, N.A.	2014 4862462	12/03/2014	12/03/2019		Specific equipment	Active

Wells Fargo Bank, N.A.	2015 1768570	04/24/2015	04/24/2020		Specific equipment	Active
Crown Equipment Corporation	2016 2180097	04/13/2016	04/13/2021		Leased equipment	Active
Bank of America, N.A., as Agent	2016 4000780	07/01/2016	07/01/2021		Blanket lien	Active
Wells Fargo Bank, N.A.	2016 7377532	11/29/2016	11/29/2021		Specific equipment	Active
Wells Fargo Bank, N.A.	2016 7588864	12/07/2016	12/07/2021		Specific equipment	Active
Raymond Leasing Corporation	2017 1648341	03/13/2017	03/13/2022		Leased equipment	Active
Bank of the West	2017 4979230	07/27/2017	07/27/2022		Leased equipment	Active
Technology Finance Corporation	2018 0082681	01/04/2018	01/04/2023		Leased equipment	Active

DEBTOR: SUPER MICRO COMPUTER, INC.				
JURISDICTION: SANTA CLARA COUNTY, CALIFORNIA				
Secured Party:	File Number:	Date Filed:	Collateral:	Status:
Trustee: PRLAP, Inc. Beneficiary: Bank of America, N.A.	23354284	07/01/2016	Fixture filing Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing filed on 07/01/2016; Document Number: 23354284 First Modification of Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing filed 05/18/2017; Document Number 23653149	Active

SCHEDULE 10.2.17
to
Loan and Security Agreement

EXISTING AFFILIATE TRANSACTIONS

Super Micro Computer Inc.										
Intercompany Balances										
Period: As of March 31, 2018										
Row Labels	.T	USA	BV	TWN	CV	Cayman	ABC	Beijing	KK	
Intercompany Receivable-ABC	\$	4,331	\$	-	\$	-	\$	-	\$	-
Intercompany Receivable-BJ	\$	25,942	\$	-	\$	-	\$	-	\$	-
Intercompany Receivable-BV	\$	40,296,191	\$	-	\$	8,713,630	\$	78,000,268	\$	484,639
Intercompany Receivable-CAYMAN	\$	427,755	\$	-	\$	-	\$	-	\$	-
Intercompany Receivable-CV	\$	103,493,033	\$	-	\$	-	\$	-	\$	-
Intercompany Receivable-KK	\$	67,542	\$	-	\$	-	\$	197	\$	-
Intercompany Receivable-TW	\$	771,545	\$	37,677,082	\$	-	\$	-	\$	-
Intercompany Receivable-US	\$	-	\$	5,827,406	\$	13,302,900	\$	12,007,159	\$	-
Intercompany Payable-TW	\$	13,302,900	\$	8,713,630	\$	-	\$	-	\$	-
Intercompany Payable-BV	\$	5,827,406	\$	-	\$	537,677,082	\$	-	\$	-
Intercompany Payable-US	\$	-	\$	40,296,191	\$	771,545	\$	103,493,033	\$	427,755
Intercompany Payable-BJ	\$	-	\$	484,639	\$	-	\$	-	\$	4,331
Intercompany Payable-KK	\$	-	\$	48,273	\$	-	\$	-	\$	25,942
Intercompany Payable-CAYMAN	\$	-	\$	-	\$	-	\$	-	\$	67,542
Intercompany Payable-CV	\$	12,007,159	\$	78,000,268	\$	-	\$	-	\$	-
Grand Total		\$176,223,804		\$ 171,047,490		\$60,465,157		\$ 193,500,460		\$ 427,952
								\$ 4,331		\$ 510,580
										\$ 116,012



中國信託銀行
CTBC BANK

PRIVATE & CONFIDENTIAL

17 Jan 2018

ATTENTION: SUPER MICRO COMPUTER, INC. TAIWAN

RE: The Summary of Credit Facilities

According to Super Micro's needs of bank facilities, CTBC Bank CO., LTD. has approved bank facilities and terms below:

Product Type	Credit Line Amount	Tenor	Interest Rate	Notes
Short Term Loan / Guarantee	NTD700M/ NTD100M	1 Year	11(M)+0.25%/ 5‰ p.a.	1. Collateral: Bade factory 2. Guarantee line is included in Short Term Loan.
Short Term Loan	NTD 1,500M	1 Year	11(M)+0.25%	1. Clean loan
Export O/A loan	USD70M	1 Year	Bargaining Rate	1. Clean loan 2. Drawdown Tenor: 120 Days 3. O/A list is required upon drawdown. 4. 100% of invoice amount can be financed.
Total Cap	USD70M			

Bargaining Rate:

- 1M COF+0.30%: repay by the end of each quarter (Mar 31, Jun 30, Sep 30, Dec 31)
- 1M COF+0.50%: Drawdown cross quarter

COF: CTBC Bank's cost of USD fund

I1: CTBC Bank's cost of NTD fund

Collateral:

- Bade factory: Mortgaged amount NTD1,160M.

Terms:

- Shared revolving line of credit facility of USD70M for SUPER MICRO COMPUTER, INC. TAIWAN and SUPER MICRO COMPUTER, B.V.
- Tenor: From 17 Jan 2018 to 31 Jan 2019



Yours Faithfully,
For and on behalf of
CTBC BANK CO., LTD.

中國信託商業銀行(股)公司 CTBC Bank Co., Ltd.

11568 臺北市南港區經貿二路168號 No.168, Jingmao 2nd Rd., Nangang Dist., Taipei City 11568, Taiwan, R.O.C.

Tel: 886-2-3327-7777



Short-Term Extension Acknowledgment Letter

APR 29, 2019

Super Micro Computer Inc. (Taiwan)

Re: Extension of Revolving Line of Credit-Loan

Dear Kevin,

This Letter will confirm that the expiration date of the credit facilities (the "Credit. Agreements") is extended to JUN 30 2019. All other terms and conditions of the Credit Agreement(s) and its related amendments will remain unchanged.

Neither this extension or any subsequent discussions or negotiations between the Bank and you shall be construed as any commitment by the Bank to further extend the maturity date provided for herein.





PRIVATE & CONFIDENTIAL

17 Jan 2018

ATTENTION: SUPER MICRO COMPUTER B.V.

RE: The Summary of Credit Facility

According to Super Micro's needs of bank facilities, CTBC Bank CO., LTD. has approved bank facility and terms below

Product Type	Credit Line amount	Tenor	Interest Rate	Notes
Export O/A loan	USD70M	1 Year	Bargaining Rate	1. Clean loan 2. Drawdown Tenor: 120 Days 3. O/A list is required upon drawdown. 4. 100% of invoice amount can be financed.

Bargaining Rate:

- 1M COF+0.30%: repay by the end of each quarter (Mar 31, Jun 30, Sep 30, Dec 31)
- 1M COF+0.50%: Drawdown cross quarter

COF: CTBC BANK's cost of USD fund.

Guarantor:

- SUPER MICRO COMPUTER, INC. TAIWAN

Terms:

- Shared revolving line of credit facility of USD70M for SUPER MICRO COMPUTER, INC. TAIWAN and SUPER MICRO COMPUTER, B.V.
- Tenor: from 17 Jan 2018 to 31 Jan 2019



Yours faithfully,
For and on behalf of
CTBC BANK CO., LTD.



CTBC BANK

Short-Term Extension Acknowledgment Letter

APR 29, 2019

Super Micro Computer, B.V.

Re: Extension of Revolving Line of Credit-Loan

Dear Kevin,

This Letter will confirm that the expiration date of the credit facilities (the "Credit. Agreements") is extended to JUN 30 2019. All other terms and conditions of the Credit Agreement(s) and its related amendments will remain unchanged.

Neither this extension or any subsequent discussions or negotiations between the Bank and you shall be construed as any commitment by the Bank to further extend the maturity date provided for herein.



CERTIFICATIONS

I, Charles Liang, certify that:

1. I have reviewed this annual report on Form 10-K of Super Micro Computer, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 16, 2019

/s/ CHARLES LIANG

Charles Liang
President, Chief Executive Officer and
Chairman of the Board
(Principal Executive Officer)

CERTIFICATIONS

I, Kevin Bauer, certify that:

1. I have reviewed this annual report on Form 10-K of Super Micro Computer, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 16, 2019

/s/ KEVIN BAUER

Kevin Bauer
Senior Vice President, Chief Financial Officer
(Principal Financial and Accounting Officer)

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350

In connection with the Annual Report of Super Micro Computer, Inc. (the "Company") on Form 10-K for the fiscal year ended June 30, 2017 as filed with the Securities and Exchange Commission (the "SEC") on or about the date hereof (the "Report"), I, Charles Liang, President, Chief Executive Officer and Chairman of the Board of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this written statement has been provided to the Company and will be retained by the Company and furnished to the SEC or its staff upon request.

Date: May 16, 2019

/s/ CHARLES LIANG

Charles Liang
President, Chief Executive Officer and Chairman of the Board
(Principal Executive Officer)

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350

In connection with the Annual Report of Super Micro Computer, Inc. (the "Company") on Form 10-K for the fiscal year ended June 30, 2017 as filed with the Securities and Exchange Commission (the "SEC") on or about the date hereof (the "Report"), I, Kevin Bauer, Senior Vice President, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this written statement has been provided to the Company and will be retained by the Company and furnished to the SEC or its staff upon request.

Date: May 16, 2019

/s/ KEVIN BAUER

Kevin Bauer
Senior Vice President, Chief Financial Officer
(Principal Financial and Accounting Officer)